code of federal regulations

Agriculture

COMPLETED 3-26

ORIGINAL

7

PARTS 1500 TO 1899
Revised as of January 1, 1986

S22-008-00019-4

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code of federal regulations

Agriculture

7

PARTS 1500 TO 1899

Revised as of January 1, 1986

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, January 1, 1986), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

INCORPORATION BY REFERENCE

What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR Part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR Part 51.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed in the Finding Aids of this volume as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, Washington DC 20408, or call (202) 523-4534.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table

III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 2, 1986

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THIS TITLE

Title 7—AGRICULTURE is composed of sixteen volumes. The parts in these volumes are arranged in the following order: Parts 0-45, Parts 46-51, Part 52, Parts 53-209, Parts 210-299, Parts 300-399, Parts 400-699, Parts 700-899, Parts 900-999, Parts 1000-1059, Parts 1060-1119, Parts 1120-1199, Parts 1200-1499, Parts 1500-1899, Parts 1900-1944, and Part 1945-end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1985.

An alphabetical list of U.S. standards for grades of processed fruits, vegetables and certain other products appears in the Finding Aids section of the volume containing Part 52.

The Food and Nutrition Service's current regulations in the volume containing Parts 210-299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing Parts 400-699 and a list of counties and crops eligible for insurance appears in an appendix to § 401.101.

All marketing agreements and orders for fruits, vegetables and nuts appear in the volume containing Parts 900-999. All marketing agreements and orders for milk appear in the three volumes containing Parts 1000-1199. Part 900—General Regulations is carried as a note in each of the three volumes containing Parts 1000-1199, and Part 1000—General Provisions of Federal Milk Marketing Orders is carried as a note in each of the two volumes containing Parts 1060-1199, as a convenience to the user.

For this volume Abram Primus was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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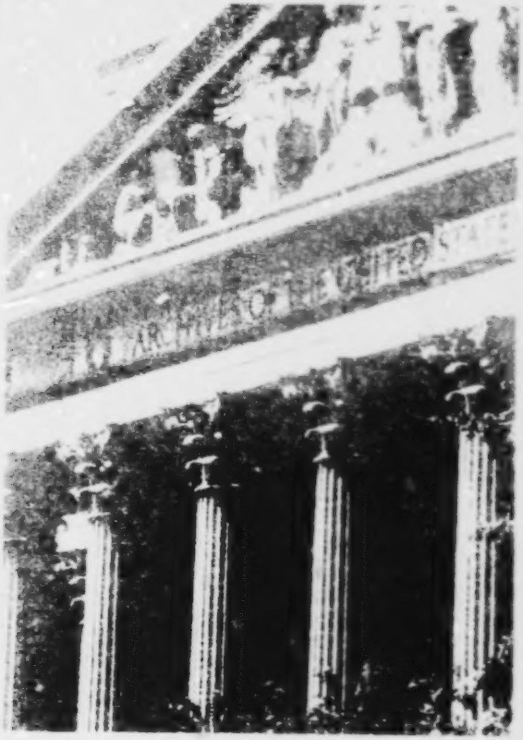

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PART 1520—AVAILABILITY OF INFORMATION TO THE PUBLIC

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Subpart C—Availability of Identifiable Records

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1520.6 Appeals.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 40 FR 27008, June 26, 1975, unless otherwise noted.

Subpart A—General

§ 1520.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture Part 1, Subpart A of Subtitle A, of this title (7 CFR 1.1 to 1.16 and Appendix A thereto), implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's Regulations, as implemented by the regulations in this part govern the availability of records of the Foreign Agricultural Service (FAS) to the public.

§ 1520.2 Organizational description.

The description of the organization of FAS is published as a notice in the FEDERAL REGISTER and may be revised from time to time in like manner. Such description contains a listing of FAS organizational units and their functions.

Subpart B—Availability of Program Information Staff Manuals, and Related Material

§ 1520.3 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by the Information Division, Foreign Agricultural Service, Room 5076-S, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250. The office will be open from 8:30 a.m. to 5 p.m. Monday through Friday, except legal holidays.

§ 1520.4 Indexes.

5 U.S.C. 552(a)(2) requires that each agency publish or otherwise make available a current index of all materials required to be made available for public inspection and copying. Copies of the Foreign Agricultural Service Index may be obtained free of charge by telephoning (202) 447-3448, or writing to the Director, Information Division, Foreign Agricultural Service, Room 5076-S, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250.

Subpart C—Availability of Identifiable Records

§ 1520.5 Request for records.

(a) Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to the appropriate program area Assistant Administrator. They are:

Assistant Administrator, Foreign Market Development
Assistant Administrator, International Trade Policy
Assistant Administrator, Foreign Commodity Analysis
Assistant Administrator, Agricultural Attaches
Assistant Administrator, Management

The mailing address for all the above persons is:

Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, D. 20250.

(b) The above officials are delegated authority to make determinations regarding such requests in accordance with 7 CFR 1.4(c). It will facilitate processing of a request for information if "FOIA REQUEST" is placed in capital letters on the front of envelope and the top of the letter.

(c) In the event a requestor does not know the appropriate program area Assistant Administrator to whom he should address his request, he may telephone the Information Division (202) 447-3448 to obtain this information or write to the Director, Information Division, Foreign Agricultural Service, Room 5076-S, Department of Agriculture, 14th and Independence Avenue, S.W., Washington, DC 20250.

[40 FR 27008, June 26, 1975, as amended at 41 FR 14727, Apr. 7, 1976]

§ 1520.6 Appeals.

(a) Any person whose request under § 1520.5 is denied shall have the right to appeal such denial. This appeal shall be submitted in accordance with 7 CFR 1.3(e) and addressed to the Administrator, Foreign Agricultural Service, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250.

(b) In the event the request is denied and the requestor wishes to appeal such decision, it will facilitate processing such appeal by placing the words "FOIA APPEAL" in capital letters on the front of the envelope and at the top of the appeal letter.

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Subpart A—[Reserved]

Subpart B—Sugar To Be Re-Exported in Sugar Containing Products

AUTHORITY: Presidential Proclamation No. 5002, 47 FR 54269.

SOURCE: Sections 1530.200 through 1530.214 appear at 49 FR 3054, Jan. 24, 1984, unless otherwise noted. Redesignated at 50 FR 47705, Nov. 20, 1985.

§ 1530.200 Definitions.

(a) "Agent" means customs house broker, freight forwarder, sugar refiner or other designee of the licensee.

(b) "Appropriate customs official" means the district or area Director of the U.S. Customs Service, his/her designee, or any other customs officer of similar authority and responsibility for the customs district in which the port of entry is located.

(c) "Date of entry" is the date when the specified U.S. Customs Service entry form is properly executed and deposited, together with any estimated duties and special import fees and any related documents required by law or regulation to be filed with such form at the time of entry with the appropriate customs official.

(d) "Date of export" means the date of exportation as shown on an export bill of lading, Customs Form 7511 (Notice of Exportation), or such other proof of export as is accepted by the Licensing Authority for the particular shipment.

(e) "Date of license" means the day when the license is issued by the Licensing Authority.

(f) "Date of Transfer" means the date of transfer of refined sugar from a refiner to a manufacturer as indicated on a Notice of Transfer.

(g) "Department" means the U.S. Department of Agriculture.

(h) "License" means either:

(1) An import license issued by the Secretary through the Licensing Authority permitting the importation of sugar, to be refined pursuant to a tolling contract, not chargeable to the import quota for sugar as modified by Presidential Proclamation 4941, as amended, for articles covered by item numbers 155.20 or 155.30 of the Tariff Schedules of the United States; or (2) a user license issued by the Secretary through the Licensing Authority permitting the transfer, in accordance with the provisions of this program, of refined sugar corresponding to sugar imported under 7 CFR 6.100 through 6.112 from a refiner to a manufacturer.

(i) "Licensing Authority" means the Chief, Sugar Group, Foreign Agricultural Service, U.S. Department of Agriculture, or his/her designee.

(j) "Manufacturer" means a person that produces a sugar containing product in the United States and exports some or all of that product.

(k) "Notice of Transfer" means a document, in form and substance satisfactory to the Licensing Authority, that is signed by both a refiner and licensed manufacturer certifying delivery of a specified amount of refined sugar corresponding to sugar imported under 7 CFR 6.100 through 6.112 from the refiner to the manufacturer.

(l) "Person" means any individual, partnership, corporation, association, estate, trust or any other business entity, and, whenever applicable, any unit, instrumentality or agency of a government, domestic or foreign.

(m) "Program" means the licensing program provided in these regulations (7 CFR 1530.200 through 1530.213).

(n) "Quota" means any quota on imports of sugar, sirups or molasses as covered by items 155.20 or 155.30 of the Tariff Schedules of the United States under Presidential Proclamation 4941 of May 5, 1982, 47 FR 19661, and any modifications thereto.

(o) "Raw value" means, for a given quantity of sugar, the equivalent of that quantity of sugar in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury.

(p) "Refined weight basis" means, for a given quantity of white crystalline sugar, the equivalent of that quantity of sugar in terms of ordinary commercial refined sugar testing 99.7 degrees or above by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury.

(q) "Refiner" means any person in the United States who engages in the processing (refining) of sugar to further improve the quality of such sugar.

(r) "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has delegated the authority or to whom the authority hereafter may be delegated to act in the Secretary's place.

(s) "Sugar" means sugars, sirups and molasses derived from sugarcane or sugar beets as defined in items 155.20 and 155.30 of the Tariff Schedules of the United States.

(t) "Sugar containing product" means any product to which sugar has been added that does not fall under items 155.20 or 155.30 of the Tariff Schedules of the United States.

(u) "Tolling contract" means an agreement between a licensed manufacturer and a U.S. refiner for the processing (for use in sugar containing products to be exported) of a specific amount of sugar owned throughout the processing operation by the manufacturer.

(v) "Valueless sugar" means sugar which has no commercial recovery value.

§ 1530.201 Issuance of a license.

(a) The Secretary, through the Licensing Authority, may issue a license to a manufacturer in accordance with the provisions of this program. The license may contain such conditions, limitations or restrictions as the Licensing Authority determines to be appropriate for the purposes of this program. The Licensing Authority may add or modify such conditions, limitations or restrictions at such time and in such manner as the Licensing Authority, in his/her discretion, determines to be necessary or appropriate for the purposes of this program.

(b) A quantity of sugar equivalent to the quantity of sugar, raw value imported under an import license, adjusted in accordance with § 1530.208(c), must be exported in a sugar containing product within 21 months of the date of entry. A quantity of sugar equivalent to the quantity of sugar, refined weight basis, transferred under a user license must be exported in a sugar containing product within 18 months of the date of transfer. However, the Licensing Authority may credit a license for valueless sugar lost in normal product manufacture.

(c) The maximum license amount is (1) 10,000 short tons of sugar, refined weight basis, for user licenses and (2) 10,700 short tons of sugar, raw value basis, for import licenses, unless otherwise determined and published by the Secretary under paragraph (e) of this section. Quantities of sugar imported/transferred under the license will be charged to the license and quantities of sugar contained in sugar containing products exported will be credited to the license as provided in § 1530.208. At no time may the outstanding balance of charges or credits exceed the maximum license amount except as a result of adjustments for polarization made pursuant to § 1530.208(c).

(d) No more than one of each type of license may be issued and outstanding at any one time to any licensee, the combined quantity of which may not exceed the quantitative limit in paragraph (c) of this section. A license may be surrendered in whole or in part to the Licensing Authority.

(e) The Secretary may change the maximum license amount through the publication of a notice in the FEDERAL REGISTER if he/she determines that such a change is appropriate within the purposes of this program.

§ 1530.202 Application for a license.

An applicant for a license must apply in writing to the Licensing Authority. The letter of application shall contain as a minimum the following information:

(a) Name and address of the applicant;

(b) License amount requested, not to exceed the maximum license amount;

(c) Type of license(s) requested (import and/or user license);

(d) The TSUS item number and description of the sugar to be imported or transferred, if known;

(e) Name of the firm that will establish a performance bond in favor of the United States Government on behalf of the applicant, if known;

(f) If the application is for a user license, the name(s) of anticipated refiner(s) from which processed non-quota sugar will be received, if known at time of application. If the application is for an import license, a certification of the existence of the valid tolling contract(s), including name(s) of refiner(s) by which non-quota sugar will be processed. However, the Licensing Authority reserves the right to inspect a copy of such a tolling contract upon request;

(g) Description of sugar containing products to be exported, if known, and estimated sugar content of such products.

The Licensing Authority may waive any provisions of this section for good cause if it is determined that such a waiver will not adversely affect the implementation of this program.

§ 1530.203 Import of sugar.

(a) Import of sugar exempt from the quotas on items 155.20 and 155.30 of the Tariff Schedules of the United States will be allowed only for refining pursuant to a tolling contract, in conformity with the conditions of the license, the provisions of this program, and any other procedures specified by the Licensing Authority.

(b) The import license holder shall submit to the Licensing Authority a statement, certified as true and accurate, of the polarization and weight of the imported sugar to be charged to the license. This statement must adequately identify the imported sugar and state the basis for the determination of the polarization of the sugar. The basis must be either the settlement polarization or some other means approved by the Licensing Authority.

(c) The holder of an import license may deliver non-quota sugar to an unlimited number of refiners for refining under valid tolling contracts, the combined total of which may not exceed the maximum license amount.

§ 1530.204 Transfer of sugar.

(a) Transfer of refined sugar imported under 7 CFR 6.100 through 6.112 will be allowed only in conformity with the conditions of the license, the provisions of this program, and any other procedures specified by the Licensing Authority.

(b) The holder of a user license shall submit to the Licensing Authority, within 10 working days of the transfer of sugar, a Notice of Transfer which must adequately identify the non-quota sugar received from a U.S. refiner, including polarization and weight of the transferred sugar to be charged to the license, refined weight basis.

(c) The holder of a user license may receive non-quota sugar from an unlimited number of refiners, the combined total of which may not exceed the maximum license amount.

§ 1530.205 Import/transfer of sugar by an agent.

The licensee may utilize an agent to import or receive non-quota sugar. The agent must, upon request, produce for inspection by the appropriate U.S. Customs official a written authorization designating such person to act as an agent for the purpose of entering sugar or must, upon request, produce for inspection by the Licensing Authority written authorization designating such person to act as an agent for the purpose of receiving transferred sugar.

§ 1530.206 Proof of export.

(a) The proof of export will consist of:

(1) *Certification.* A written certification by the license holder that he/she has exported a specified quantity of sugar in sugar containing products. The certification shall include:

(i) The license holder's name and address;

(ii) An identification of the license to which the quantity of sugar in the sugar containing product that is exported is to be credited;

(iii) The weight of sugar, refined weight basis, contained in the sugar containing product exported, and the amount of valueless sugar, refined weight basis, actually lost in the manufacture of that product;

(iv) The percentage of valueless sugar lost in normal product manufacture;

(v) The date of export, point of export, and an identification of the export carrier;

(vi) The intended destination; and

(vii) For sugar imported or transferred before the export of the corresponding sugar containing product, an identification of the imported or transferred sugar to which the sugar in the exported sugar containing product corresponds, including the quantity and polarization of the imported/transferred sugar.

(2) *Documentation.* A copy of a certified Customs Form 7511 (Notice of Exportation) or an original bill of lading. A copy of an original bill of lading, with indication of the U.S. Customs Office at which the original is filed, with drawback claim number, or a copy of a Chronological Summary of Exports pursuant to 19 CFR 191.53 with indication of the U.S. Customs office at which the original is filed, with drawback claim number, will also serve as acceptable documentation.

(b) The certification must accompany the documentation submitted to the Licensing authority. The certification and documentation must be submitted to the Licensing Authority within 6 months from the date of export. The Licensing Authority will not credit the license for sugar exported in sugar containing products until satisfactory proof of export is received.

(c) The Licensing Authority may waive the provisions of this section if exportation is otherwise established to the Licensing Authority's satisfaction.

§ 1530.207 Bond requirements.

(a) Sugar imported under an import license must meet all applicable Customs bond requirements (see 19 CFR Parts 113, 141 through 144) and be subject to a U.S. Customs performance bond ("bond") posted with the appropriate Customs official meeting the requirements of this section. Sugar transferred under license shall be subject to a bond posted with the Licensing Authority, meeting the requirements of this section. However, no bond will be required for the quantity of any sugar imported or transferred under license that corresponds to a quantity of sugar that has been exported prior to the import or transfer of such sugar and credited to the license in accordance with § 1530.208.

(b) A bond may cover imports or transfers made either during the period of time specified in the bond (term bond) or for a specified import or transfer (single entry bond).

(c) Only the manufacturer who imports the sugar may be the principal on a bond to cover such sugar to be imported. Only the manufacturer who will use the sugar may be the principal on a bond to cover such sugar to be transferred. The surety or sureties shall be among those listed by the Secretary of the Treasury as acceptable on Federal bonds.

(d) The obligation under the bond shall be made effective as of the date of entry/transfer of the corresponding sugar.

(e) The amount of the bond shall be equal to 1.5 times the difference between the Market Stabilization Price in effect for the appropriate period as announced by the Secretary under §§ 6.300-6.302 of this title and the daily "spot" price per pound of raw sugar of the Number 11 contract of the New York Coffee, Sugar and Cocoa Exchange, multiplied by the weight of the sugar, raw value, imported or transferred under the license. In the case of a single entry bond, the Number 11 contract price and the Market Stabilization Price shall be computed as of the last market day before the execution of the bond. However, the Licensing Authority may adjust the amount on a single entry bond on a semi-annual basis, using the Number 11 contract price and the Market Stabilization Price as of the last market day before the end of the six month period, if the Licensing Authority determines it necessary or appropriate for the purposes of this program. In the case of a term bond, the difference between the Number 11 contract price and the Market Stabilization Price shall be computed quarterly based on the average price difference during the 20 consecutive market days preceding the 20th day of the month preceding the calendar quarter for which the bond is to be effective. If the New York Coffee, Sugar and Cocoa Exchange does not report a Number 11 contract price for the last market day before the entry of the sugar, or if there is no Market Stabilization Price in effect, then the Licensing Authority may use such price as he or she deems appropriate.

(f) The appropriate Customs official will release the obligation under the U.S. Customs bond for imported sugar by an amount computed in accordance with § 1530.207(e) for a corresponding quantity of sugar credited to the license in accordance with § 1530.208(b), as determined by the Licensing Authority. The Licensing Authority will release the obligation under the bond for transferred sugar by an amount computed in accordance with § 1530.207(e) for a corresponding quantity of sugar credited to the license in accordance with § 1530.208(b), as determined by the Licensing Authority.

(g) If the license holder fails to qualify for a credit to the license within 27 months of the date of entry or within 24 months of the date of transfer of corresponding sugar in an amount sufficient to offset the charge to the license for that corresponding sugar, payment will be made to the United States of America under the bond of the monetary amount corresponding to the amount of the charge to the license for the corresponding sugar not offset by timely exportation. Payment for non-performance under U.S. Customs bonds will be handled pursuant to 19 CFR Part 172. Payment for non-performance under bonds will be handled pursuant to provisions established by the Licensing Authority.

[49 FR 3054, Jan. 24, 1984. Redesignated and amended at 50 FR 47704, Nov. 20, 1985]

§ 1530.208 Charges and credits to licenses.

(a) Charges will be made to an import license for quantities of sugar, raw value, imported under the license effective as of the date of entry. This charge will be adjusted on the basis set forth in paragraph (c) of this section when the license holder submits the information required by § 1530.203. Charges will be made to a user license for quantities of sugar, refined weight basis, transferred under the license when the license holder submits the information required by § 1530.204 effective as of the date of transfer.

(b) At the request of the license holder, the Licensing Authority will credit a license for:

(1) Quantities of sugar in the sugar containing products for which proof of export has been submitted in accordance with the provisions of this program;

(2) Quantities of sugar charged to license which the Licensing Authority determines have been destroyed, lost in the production process, or otherwise disposed of so as to render the use or exportation of a corresponding quantity of sugar in sugar containing products impossible or unnecessary; and

(3) For sugar charged to an import license, the quantity of sugar lost in the refining process. This shall be computed by dividing the quantity of sugar imported, expressed on a raw value basis, by 1.07.

Amounts credited under paragraphs (b)(2) or (3) of this section shall be considered to have been exported in sugar containing products for purposes of § 1530.201(b).

(c) To obtain the raw value for sugar with a polarization of 92 degrees or above, the formula to be used is [(Polarization × .0175) − 0.68] × weight. For sugar of less than 92 degrees polarization the total sugar content shall be divided by 0.972.

§ 1530.209 Replacement of sugars; substitution of sugars.

(a) The sugar exported in sugar containing products does not have to be identical to the sugar imported or transferred.

(b) Exportation of sugar in sugar containing products for credit to the license may occur any time after the date of the license. Any quantity of sugar exported in sugar containing products after the date of the license but prior to the entry or transfer of the corresponding sugar will be treated as having been exported within 21 months of entry, or within 18 months of transfer, of the corresponding sugar for purposes of § 1530.201(b).

§ 1530.210 Records.

(a) Each manufacturer requesting credit in accordance with § 1530.208(b) shall keep records to establish for all sugar containing products exported under the provisions of this program:

(1) The date or inclusive dates of manufacture;

(2) The quantity and identity of the sugar, refined basis, imported or transferred under the provisions of this program;

(3) The quantity and description of the articles manufactured;

(4) The amount of sugar, refined basis, contained in the sugar containing products.

(b) Each manufacturer requesting credit for valueless sugar lost in normal product manufacture shall also keep records to establish for all sugar containing products exported under the provisions of this program the quantity of loss incurred.

(c) All records required to be kept by a manufacturer under this program concerning particular sugar shall be retained for at least three years after a license is credited for that sugar in accordance with § 1530.208 (b).

(d) The manufacturer must, upon request, make the records covered by this section available to the Licensing Authority for inspection.

(e) If, after inspection of the records, the Licensing Authority determines that records are inadequate to establish valueless loss, the Licensing Authority may revoke credit granted for such sugar.

§ 1530.211 Enforcement.

(a) If at any time after receiving the proof of export described in § 1530.206 of this subpart, the Licensing Authority determines that export of sugar in the form of sugar-containing products corresponsing to the amount of sugar entered/transferred under the license did not occur, and has not been otherwise disposed of or lost in the manufacturing process as valueless sugar, and if the bond has been released under § 1530.207, the Licensing Authority may hold the license holder liable for up to 1.5 times the difference between the Number 11 daily "spot" price and the Market Stabilization Price per pound of raw sugar, as these prices are described in § 1530.207(e) of this program, in effect on the last market day before entry/transfer of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the amount of sugar, raw value, that should have been, but was not, exported in sugar-containing products. In the event no Number 11 price is reported by the New York Coffee, Sugar and Cocoa Exchange, or no Market Stabilization Price is effective for the relevant market day, then the Licensing Authority may use such price as he/she deems appropriate.

(b) If at any time the Licensing Authority determines that a license holder has failed to comply with the requirements of this program, the Licensing Authority may, after notice to the license holder, suspend or revoke the license issued to the license holder under this program and/or refuse to issue future licenses to that manufacturer. The Licensing Authority reserves the right to suspend or revoke a license if claims filed under 19 CFR Part 191 are denied.

(c) The determination of the Licensing Authority under paragraphs (a) and (b) of this section may be appealed to the Director, Horticultural and Tropical Products Division, Foreign Agricultural Service (FAS), within 30 days from the date of notification. The request for reconsideration shall be presented in writing specifically stating any reason as to why such determination should not stand. The Director, Horticultural and Tropical Products Division, FAS, will provide such person with an opportunity for an informal hearing on such matter. A further appeal may be made to the Administrator, FAS, within five working days of the notification of the decision of the Director, Horticultural and Tropical Products Division, FAS.

[49 FR 3054, Jan. 24, 1984. Redesignated and amended at 50 FR 47704, Nov. 20, 1985]

§ 1530.212 Waiver.

(a) Under unusual, unforeseen or extraordinary circumstances, the Licensing Authority may extend the period for the export of sugar in sugar containing products or may temporarily increase the maximum amount of the license upon written application of the license holder.

(b) The Licensing Authority may, for good cause, extend the period for submitting proof of export upon written application of the license holder.

§ 1530.213 Expiration.

The licenses issued under this program shall expire upon written notice to the license holders by the Licensing Authority. The notice will state the expiration date of the licenses and any other details applicable to the expiration of the licenses.

§ 1530.214 Paperwork Reduction Act Assigned Number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 25 and OMB Number 0551-0016 has been assigned.

Subpart C—Sugar for Production of Polyhydric Alcohol

AUTHORITY: Presidential Proclamation No. 5002, 47 FR 54269.

SOURCE: Sections 1530.300 through 1530.310 appear at 49 FR 3049, Jan. 24, 1984, unless otherwise noted. Redesignated at 50 FR 47704, Nov. 20, 1985.

§ 1530.300 Definitions.

As used in this program:

(a) "Agent" means a licensed customhouse broker or other person designated by the license holder.

(b) "Appropriate customs official" means the district or area Director of Customs, his designee, or any other customs officer of similar authority and responsibility, for the customs district in which the port of entry is located.

(c) "Department" means the U.S. Department of Agriculture.

(d) "Import license" means a license issued by the Secretary permitting the entry of sugar exempt from the quota on the importation of sugar, on condition that such sugar will be used within 180 days of entry solely for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption.

(e) "Licensing Authority" means the Chief, Sugar Group, Foreign Agricultural Service, U.S. Department of Agriculture.

(f) "Manufacturer" means a person that is engaged in the production (other than by distillation) of polyhydric alcohols from sugar.

(g) "Person" means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity, and, wherever applicable, any unit, instrumentality, or agency of a government, domestic or foreign.

(h) "Program" means the licensing program provided for in these regulations (7 CFR 1530.300 through 1530.310).

(i) "Quota" means any quota on imports of sugar, sirups or molasses as covered by items 155.20 or 155.30 of the Tariff Schedules of the United States under Presidential Proclamation 4941 of May 5, 1982, 47 FR 19661, and any modifications thereto.

(j) "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has delegated the authority or to whom authority may hereafter be delegated to act in the Secretary's place.

(k) "Sugar" means sugars, sirups, and molasses as defined in items 155.20 and 155.30 of the Tariff Schedules of the United States.

§ 1530.301 Issuance of an import license.

(a) An import license may be issued to a manufacturer that complies with the provisions of this program. The license shall state the time period during which the license shall be effective and the maximum amount of sugar which may be imported under the license. In no case shall the effective period of a license exceed 1 year, nor shall the maximum amount of sugar which may be imported under the license exceed the anticipated requirements of the manufacturer for the 12-month period following the effective date of the license. The license may contain such other conditions as the Licensing Authority, in his/her discretion, deems necessary.

(b) No more than one effective license may be issued and outstanding at any one time to any one manufacturer. In order to insure a dependable and orderly supply of sugar, a manufacturer may apply for a license prior to the expiration of a previously issued license. The previously issued license shall be deemed to have expired on its stated expiration date, or on the effective date of the succeeding license, whichever is earlier. A succeeding license may not be issued until the previously issued license has been returned to the Licensing Authority.

§ 1530.302 Transferability of an import license.

An import license may not be transferred or assigned by the manufacturer to any other person. Any attempt to transfer or assign an import license shall be null and void and shall constitute grounds for the revocation of the license by the Licening Authority.

§ 1530.303 Entry of sugar.

(a) A manufacturer or its agent may enter sugar into the United States exempt from the quota on the importation of sugar under an import license issued pursuant to this program. The import license must be presented to the appropriate customs official at the time of entry. Entry of the sugar exempt from quota shall be allowed only in conformity with the conditions of the import license, if any.

(b) The appropriate customs official shall enter on the license:

(1) The amount of sugar entered; (2) the date of entry; and (3) the customs entry number.

(c) A copy of the license, as marked by the appropriate customs official, shall be transmitted to the Licensing Authority by the license holder within 10 business days after each entry of sugar. The Licensing Authority may extend the 10-day period upon request of the license holder for good cause.

§ 1530.304 Entry of sugar by an agent.

(a) In those cases where sugar is to be entered by an agent of the manufacturer, the agent shall produce for inspection by the appropriate customs official a written authorization by the manufacturer designating such person to act as the agent of the manufacturer for the purpose of entering sugar.

(b) A copy of such authorization shall be attached to the copy of the import license that is transmitted to the Licensing Authority pursuant to § 1530.303(c) of this subpart.

§ 1530.305 Application for an import license.

(a) Only manufacturers are eligible to receive an import license.

(b) Each application for an import license shall contain the following information:

(1) Name and address of the manufacturer.

(2) A statement of the anticipated requirements of the manufacturer for sugar to be used in the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, during the effective period of the license.

(3) The anticipated amount of sugar to be imported during the specified effective period.

(4) The effective period of the import license (not to exceed one year).

(c) Each application for an import license shall contain a certification that the manufacturer shall use the quantity of sugar entered under an import license solely for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption.

§ 1530.306 Bond requirements.

(a) Sugar entered under an import license shall be subject to all customs bond requirements (see 19 CFR Parts 113, 141, 143 and 144). The appropriate customs official may assess liquidated damages under the customs entry bond for violation of any provision of the import license or this program.

(b) The amount of the bond shall be equal to 1.5 times the difference between the Market Stabilization Price per pound of raw sugar and the daily "spot" price per pound of raw sugar of the Number 11 contract of the New York Coffee, Sugar and Cocoa Exchange, multiplied by the weight of the sugar entered under the license. The Number 11 contract price and the Market Stabilization Price shall be computed as of the last market day before the entry of the sugar. If the New York Coffee, Sugar and Cocoa Exchange does not report a Number 11 contract price for the last market day before the entry of the sugar, or if there is no Market Stabilization Price in effect, then the Licensing Authority may use such price as he or she deems appropriate.

(c) The appropriate customs official will release all or part of the obligation under the bond for sugar for which a certificate of use has been properly and timely filed under § 1530.308.

(d) The appropriate customs official may release all or part of the obligation under a bond if the Licensing Authority determines that the destruction or other disposition of a quantity of sugar entered under an import license renders performance under the bond impossible or inequitable. In such case the Licensing Authority shall notify the appropriate customs official of his/her determination. The determination shall be treated as a certificate of use which has been properly and timely filed and shall be considered as use of the sugar in production (other than by distillation) of polyhydric alcohol, except polyhydric alcohols for use as a substitute in human food consumption for purposes of § 1530.307.

[49 FR 3054, Jan. 24, 1984. Redesignated and amended at 50 FR 47705, Nov. 20, 1985]

§ 1530.307 Default.

For each entry of sugar under a license, upon failure to use the total amount of such sugar in the production (other than by distillation) of polyhydric alcohol, except polyhydric alcohols for use as a substitute for sugar in human consumption, within 180 days of the date of entry, payment of the obligation under the bond covering that part of sugar not used for that purpose shall be made to the appropriate customs official.

§ 1530.308 Certificate of use.

(a) The certificate of use shall be a certification by the manufacturer that a quantity of sugar entered under an import license has been used for the purpose stated in § 1530.300(d). Certificates of use shall be transmitted to the appropriate customs official and the Licensing Authority within one month after use of the sugar. In no case shall a certificate of use be accepted more than 180 days after the expiration of the import license under which the sugar was imported, unless the Licensing Authority, in his/her discretion, extends the time period in which a certificate may be filed.

(b) The certificate of use shall be signed by the manufacturer and shall contain the following certification:

The undersigned hereby certifies that between ——, 19—, and ——, 19—, the undersigned has used ——— pounds of sugar for the sole purpose of producing (other than by distillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption. The undersigned further certifies that the quantity of sugar shown on this certificate of use does not include any sugar previously covered by another certificate of use.

§ 1530.309 Enforcement.

(a) If at any time after receiving the Certificate of Use described in § 1530.308 of this subpart, the Licensing Authority determines that a quantity of sugar corresponding to the amount of sugar entered under the license was not used for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols used for human food consumption, and if the bond has been released under § 1530.306 of this subpart, the Licensing Authority may hold the license holder liable for up to 1.5 times the difference between the Number 11 daily "spot" price and the Market Stabilization Price per pound of raw sugar, as those prices are described in § 1530.306(b) of this program (or such other price determined by the Licensing Authority in the event no Number 11 price is reported or no Market Stabilization Price is effective) in effect on the last market day before entry of the sugar or the last market day prior to the expiration of the 180-day period during which the sugar was to be but was not used in the production of polyhydric alcohols, whichever difference is greater, times the amount of sugar, raw value, that should have been, but was not, used for the production (other than by distillation) of polyhydric alcohol, except polyhydric alcohols used for human consumption.

(b) If at any time the Licensing Authority determines that a license holder has failed to comply with the requirements of this program, the Licensing Authority may, after notice to the license holder, suspend or revoke the license issued to the license holder pursuant to this program and/or refuse to issue future licenses to that manufacturer.

(c) The determination of the Licensing Authority under paragraphs (a) and (b) of this section may be appealed to the Director, Horticultural and Tropical Products Division, Foreign Agricultural Service (FAS), within 30 days from the date of notification. The request for reconsideration shall be presented in writing specifically stating any reason as to why such determination should not stand. The director, Horticultural and Tropical Products Division, FAS, will provide such person with an opportunity for an informal hearing on such matter. A further appeal may be made to the Administrator, FAS, within five working days of the notification of the decision of the Director, Horticultural and Tropical Products, FAS.

(d) Notice of failure to comply with the requirements of this program shall be given to the manufacturer and to the Customs Service.

[49 FR 3054, Jan. 24, 1984. Redesignated and amended at 50 FR 47705, Nov. 20, 1985]

§ 1530.310 Paperwork Reduction Act Assigned Number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 25 and OMB Number 0551-0019 has been assigned.

PART 1540—INTERNATIONAL AGRICULTURAL TRADE

Subpart A—Emergency Relief From Duty-Free Imports of Perishable Products

Sec.

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Subpart B—Emergency Relief From Certain Perishable Products Imported From Israel

1540.20 Applicability of subpart.
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1540.22 Who may file request.
1540.23 Contents of request.
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1540.25 Information.
1540.26 Paperwork Reduction Act assigned number.

AUTHORITY: Sec. 213(f), Pub. L. 98-67, 97 Stat. 391 (19 U.S.C. 2703(f)); 5 U.S.C. 301; sec. 404, Pub. L. 98-573, 98 Stat. 3016, as amended (19 U.S.C. 2112 note); 5 U.S.C. 301.

Subpart A—Emergency Relief From Duty-Free Imports of Perishable Products

AUTHORITY: Sec. 213(f), Pub. L. 98-67, 97 Stat. 391 (19 U.S.C. 2703(f); 5 U.S.C. 301.

SOURCE: 49 FR 22265, May 29, 1984, unless otherwise noted.

CROSS REFERENCE: For United States International Trade Commission regulations on investigations of import injury and the rules pertaining to the filing of a section 201 petition, see 19 CFR Part 206.

§ 1540.1 Applicability of subpart.

This subpart applies to requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 213(f) of the Caribbean Basin Economic Recovery Act of 1983, Title II of Pub. L. 98-67, 97 Stat. 384 (19 U.S.C. 2701 *et seq.*) (the Act).

§ 1540.2 Definitions.

(a) "Perishable product" means:

(1) Live plants provided for in subpart A of part 6 of schedule 1 of the Tariff Schedules of the United States (TSUS);

(2) Fresh or chilled vegetables provided for in items 135.10 through 138.42 of the TSUS;

(3) Fresh mushrooms provided for in item 144.10 of the TSUS;

(4) Fresh fruit provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.33, 147.50 through 149.21 and 149.50 of the TSUS;

(5) Fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(6) Concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS.

(b) "Beneficiary country" means any country listed in section 212(b) of the Act with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of the Act.

§ 1540.3 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group or workers, trade association, or certified or recognized union which is representative of a domestic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported into the United States duty-free under the provisions of the Act from a beneficiary country(ies) in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 1540.4 Contents of request.

A request for emergency action under section 213(f) of the Act shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Such requests shall be supported by appropriate information and data and shall include to the extent possible:

(a) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury;

(b) The beneficiary country(ies) of origin of the allegedly injurious imports;

(c) Data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from the designated beneficiary country(ies) in increased quantities as compared with imports of the same product from the designated beneficiary country(ies) during a previous representative period of time (including a statement of why the period used should be considered to be representative);

(d) Evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from the beneficiary country(ies); and

(e) A statement indicating why emergency action would be warranted under section 213(f) of the Act (including all available evidence that the injury caused by the increased quantities of imports from the beneficiary country(ies) would be relieved by the suspension of the duty-free treatment accorded under the Act).

A copy of the petition and the supporting evidence filed with the United States International Trade Commission under section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

§ 1540.5 Submission of recommendations.

If the Secretary has reason to believe that the perishable product which is the subject of a petition under § 1540.4 of this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under § 1540.4 of this subpart, shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary shall publish a notice of such determination and will so advise the petitioner within 14 days after the filing of the petition.

§ 1540.6 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation of section 213(f) of the Act should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250.

§ 1540.7 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 25, and OMB number 0551-0018 has been assigned.

Subpart B—Emergency Relief From Certain Perishable Products Imported From Israel

AUTHORITY: Sec. 404, Pub. L. 98-573, 98 Stat. 3016, as amended (19 U.S.C. 2112 note); 5 U.S.C. 301.

SOURCE: 50 FR 43692, Oct. 29, 1985, unless otherwise noted.

CROSS REFERENCE: For U.S. International Trade Commission regulations concerning investigations of import injury and the rules pertaining to the filing of a section 201 petition, see 19 CFR Part 206.

§ 1540.20 Applicability of subpart.

This subpart applies to requests filed with the Department of Agriculture under section 404 of the Trade and Tariff Act of 1984, Pub. L. 98-573, for emergency relief from imports of certain perishable products from Israel entering the United States at a reduced rate of duty or duty-free pursuant to a trade agreement between the United States and Israel entered into under section 102(b)(1) of the Trade Act of 1974, as amended.

§ 1540.21 Definition.

"Perishable product" means:

(a) Live plants provided for in subpart A of part 6 of schedule 1 of the 1985 Tariff Schedules of the United States (the "TSUS");

(b) Fresh or chilled vegetables provided for in items 135.03 through 138.46 of the TSUS;

(c) Fresh mushrooms provided for in item 144.10 of the TSUS;

(d) Fresh fruits provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.44, 147.50 through 149.21 and 149.50 of the TSUS;

(e) Fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(f) Concentrated citrus fruit juice provided for in items 165.25, 165.29 and 165.36 of the TSUS.

§ 1540.22 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group or workers, trade association, or certified or recognized union which is representative of a domestic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported from Israel into the United States at a reduced duty or duty-free under the provisions of a trade agreement between the United States and Israel entered into under section 102(b)(1) of the Trade Act of 1974, as amended, in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 1540.23 Contents of request.

A request for emergency action under Section 404 of the Trade and Tariff Act of 1984 shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Such request shall be supported by appropriate information and data and shall include to the extent possible:

(a) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury;

(b) Data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from Israel in increased quantities as compared with imports of the same product from Israel during a previous representative period of time (including a statement of why the period selected by the petitioner should be considered to be representative);

(c) Evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from Israel; and

(d) A statement indicating why emergency action would be warranted under Section 404 (including all available evidence that the injury caused by the increased quantities of imports from Israel would be relieved by the withdrawal of the reduction of the duty or elimination of the duty-free treatment provided to the product under the trade agreement). A copy of the petition and the supporting evidence filed with the United States International Trade Commission under Section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

§ 1540.24 Determination of the Secretary of Agriculture.

If the Secretary of Agriculture has reason to believe that the perishable product(s) which is the subject of a petition under this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under § 1540.23 shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary, within 14 days after the filing of the petition, will publish in the FEDERAL REGISTER a notice of such determination and will so advise the petitioner.

§ 1540.25 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation of Section 404 of the Trade and Tariff Act of 1984 should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250.

§ 1540.26 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 25, and OMB Number 0551-0023 has been assigned.

CHAPTER XVI—RURAL TELEPHONE BANK, DEPARTMENT OF AGRICULTURE

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PART 1610—LOAN POLICIES

Sec.

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AUTHORITY: 85 Stat. 29 *et seq.*; 7 U.S.C. 931 *et seq.*, as amended at Pub. L. 93-32, 87 Stat. 65, *et seq.*

SOURCE: 38 FR 17184, June 29, 1973, unless otherwise noted.

§ 1610.1 General.

Loans made by the Governor of the Rural Telephone Bank (the "Bank") will be made in conformance with Title IV of the Rural Electrification Act of 1936 (the "Act"), as amended (7 U.S.C. 941 *et seq.*), and this Part 1610. The making of loans will commence as soon as practicable after January 1, 1972.

§ 1610.2 Loan authorizations.

The aggregate amount of loans made will not exceed the amount authorized by the Board of Directors (the "Board") of the Bank.

§ 1610.3 Loan applications.

No application for a loan will be considered by the Bank until it has been reviewed by the Rural Electrification Administration (REA), and the Governor has determined, based on such review, the eligibility of the applicant for a Bank loan and the amount thereof. Loan application forms are available from REA on request. Applications previously submitted to REA need not be resubmitted to be considered for partial or complete Bank financing. In accordance with section 408(b)(2) of the Act (7 U.S.C. 948 (b)(2)), an application for a loan from a telephone system with an average subscriber density of three or fewer per mile will be processed for a Bank loan if the applicant elects to be considered for such a loan in preference to a loan from REA.

§ 1610.4 Minimum Bank loan.

A Bank loan will not be made unless the applicant qualifies for a Bank loan of at least $50,000.

§ 1610.5 Concurrent REA and Bank loans.

The Bank will consider making a loan concurrently with REA when REA has requested the applicant, pursuant to section 307 of the Act, to obtain a loan for part of its credit needs from a credit source other than REA, and the Governor finds that the applicant could, consistently with achieving the objectives of the Act and with prudent operations, produce net income or margins before interest at least equal to 150 percent of the interest requirements on all its outstanding and proposed loans, including a loan from REA at its standard interest rate of 5 percent for enough of its current loan needs to qualify the applicant for a loan from the Bank at its cost of money rate for the balance of such current loan needs, as determined by the Governor. The cost of money rate is defined as the average cost of moneys to the Bank as determined from time to time by the Governor but not less than 5 percent.

§ 1610.6 Exclusive Bank financing for current loan needs.

The Bank will consider making a loan for the applicant's total current loan needs as determined by the Governor when the Governor finds that the applicant could, consistently with achieving the objectives of the Act and with prudent operations, produce net income or margins before interest at least equal to 150 percent of the interest requirements on all its outstanding and proposed loans, including an annual interest rate on the loan for the current needs equal to or greater than the Bank's cost of money rate as defined in § 1610.5.

§ 1610.7 Acquisition of certain exchange facilities.

In the interest of making optimum use of the Bank's loan funds, a Bank loan for the acquisition of exchange facilities under section 408(a)(2) of the Act (7 U.S.C. 948(a)(2)) will not be recommended by the Governor for approval by the Secretary of Agriculture unless the Governor determines that the acquisition is reasonably necessary to improve the efficiency, effectiveness, or financial stability of the borrower's telephone system, that the location and character of the proposed acquisition are such that the acquisition is reasonably necessary to accomplish such improvement, and that the amount of the requested loan for such acquisition is reasonably justified by the nature and scope of the improvement which the acquisition would effect.

§ 1610.8 Adoption of applicable REA policies.

The policies embodied in the REA Bulletins identified below, as they may be amended or supplemented from time to time, will, insofar as applicable, be utilized by the Governor in carrying out the Bank's loan program to the extent that (a) such policies are consistent with Title IV of the Act (7 U.S.C. 941 *et seq.*) and with specific policies approved by the Board from time to time, and (b) such policies have not been rescinded, modified, or superseded by the Board with respect to the Bank's lending program. The aforesaid bulletins are as follows:

Bulletin series	Subject matter
300-309	General
320-327	Loans
340-388	Design and Construction
400-415	General Operations
440-448	Technical Operation and Maintenance
460-466	Accounting and Examination

EDITORIAL NOTE: A current list and summary description of the REA Bulletins referred to above, filed as Appendix A to Part 1701, Title 7, Code of Federal Regulations, was revised at 40 FR 16075, Apr. 9, 1975, and amended at 40 FR 31956, July 30, 1975. For FR citations affecting REA Bulletins, see "List of CFR Sections Affected" appearing in the Finding Aids section of this volume.

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CHAPTER XVII—RURAL ELECTRIFICATION ADMINISTRATION, DEPARTMENT OF AGRICULTURE

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PART 1700—PROCEDURES

Sec.
1700.1 Loans pursuant to section 4 of Rural Electrification Act.
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1700.3 Loans pursuant to section 201 of Rural Electrification Act.
1700.3a CATV loans and guarantees under the Consolidated Farm and Rural Development Act.
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1700.3c Guaranteed loans pursuant to section 306 of the Rural Electrification Act, as amended May 11, 1973.
1700.4 Studies, investigations, and reports.
1700.5 Loan security activities.
1700.6 Issuances implementing procedure.

AUTHORITY: 7 U.S.C. 901-950(b), 7 U.S.C. 1921 *et seq.*, and 44 FR 30313, May 25, 1979.

SOURCE: 28 FR 117, Jan. 4, 1963, unless otherwise noted. Redesignated at 31 FR 16225, Dec. 20, 1966.

§ 1700.1 Loans pursuant to section 4 of Rural Electrification Act.

(a) *General.* These loans are made to finance the construction and operation of generating plants, electric transmission and distribution lines or systems to provide initial and continued adequate electric service to persons in rural areas. The loans must be self-liquidating within a period of not to exceed thirty-five years, bear interest at the rate of two per centum per annum, and must be reasonably secured in the judgment of the Administrator. They may be made to persons, corporations, public bodies, and to cooperative, non-profit, or limited dividend associations. Preference is to be given to public bodies and to cooperative, non-profit, or limited dividend associations.

(b) *Loan applications.* Applications for these loans are made on forms prescribed by REA and supported by a resolution of the applicant's board of directors. Copies of these standard forms are made available by REA on request. Applicants for loans from the Rural Electrification Administration are assisted, as necessary, in perfecting their organization, in the conduct of their surveys and in the preparation of the loan application. After the information provided by the application has been examined, the applicant is notified of any further steps to be taken. If an application is acceptable after legal, engineering, economic, and financial studies, funds are obligated by a loan contract and the borrower gives a note, mortgage and, in some cases, other security.

(c) *Construction.* Under the loan agreements REA reserves the right to approve the design and construction of the facilities, and to require progress reports on construction and audits of the borrower's records relating to construction.

(d) *Advance of loan funds.* Loan funds are advanced on the basis of requisitions submitted by borrowers in accordance with the loan contract.

§ 1700.2 Loans pursuant to section 5 of Rural Electrification Act.

(a) *General.* These loans are made to the borrowers of funds loaned under section 4 of the Rural Electrification Act for financing the wiring of the premises of persons in rural areas and for purchase and installation of electrical and plumbing appliances and equipment, including machinery. The loans are required to be repaid, generally over a period of ten years, and bear interest at two per centum per annum. The funds made available to REA borrowers under these loans are reloaned to their consumers.

(b) *Loan applications.* There is no standard or prescribed form of application for this type of loan. A letter accompanied by a resolution of the board of directors is submitted in support of the application setting forth the purposes for which the loan is requested and the amounts required for each purpose. Supplemental data is required of the applicant as necessary to complete the particular application. If the Administrator approves a loan proposal, the applicant is notified and loan documents are forwarded for the signature of the borrower.

(c) *Advance of loan funds.* Loan funds are advanced on the basis of requisitions submitted by borrowers in accordance with the loan contract.

§ 1700.3 Loans pursuant to section 201 of Rural Electrification Act.

(a) *General.* These loans are made for the purpose of financing the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems to furnish or improve telephone service in rural areas. Borrowers may be required to provide a portion of the investment themselves. The loans must be self-liquidating within a period of not to exceed thirty-five years, bear interest at the rate of two per centum per annum and must be reasonably secured in the judgment of the Administrator. The loans may be made to any type of commercial or non-profit corporation now providing or who may hereafter provide telephone service in rural areas. Preference is to be given to persons providing telephone service in rural areas, and to cooperative, nonprofit, limited dividend, or mutual associations.

(b) *Loan applications.* Applications for these loans are made on forms prescribed by REA, copies of which are made available by REA on request. Applicants for loans from the Rural Electrification Administration are assisted as necessary in perfecting their organization, in the conduct of their surveys and in the preparation of loan applications. After the information provided by the application has been examined, the applicant is notified of any further steps to be taken. If an application is acceptable after legal, engineering, economic, and financial studies, funds are obligated by a loan contract and the borrower gives a note, mortgage, and, in some cases, other security.

(c) *Construction.* Under the loan agreements, REA reserves the right to approve the design and construction of the facilities, and to require progress reports on construction and audits of the borrower's records relating to construction.

(d) *Advance of loan funds.* Loan funds are advanced on the basis of requisitions submitted by borrowers in accordance with the loan contract.

§ 1700.3a CATV loans and gurantees under the Consolidated Farm and Rural Development Act.

(a) *General.* Loans and loan guarantees may be made by the Administrator pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) (Development Act) to finance community antenna television (CATV) services or facilities.

(b) *Loan applications, construction and advance of loan funds.* Section 1700.3(b) will applied with respect to applications for insured loans or loan guarantees under the Development Act for CATV purposes. § 1700.3(c) will be applied with respect to the construction of such facilities, and § 1700.3(d) will applied to the advance of funds on account of such insured loans or loan guarantees.

(c) *Community facility loans for CATV purposes.* Loans for CATV purposes which qualify as community facility loans may be made and insured by the Administrator under section 306 of the Development Act (7 U.S.C. 1926).

(d) *Business and industrial loans for CATV purposes.* Business and industrial loans and loan guarantees for CATV purposes may be made by the Administrator under Sec. 310B of the Development Act (7 U.S.C. 1932). The loan guarantee will provide for reimbursement to the lender for not more than 90 percent of the principal and interest. Interest rates of loans to be guaranteed will be at a rate agreed upon by the lender and the borrower.

[44 FR 39372, July 6, 1979]

§ 1700.3b Insured loans pursuant to section 305 of the Rural Electrification Act, as amended May 11, 1973.

(a) *General.* These loans are made by the Administrator for the purposes authorized by sections 4 and 201 of the Rural Electrification Act (see §§ 1700.1 and 1700.3) and though serviced by the Administrator, are sold with a contract of insurance by the Administrator. The standard interest rate on the loans made by the Administrator under this section is 5 percent, but a special 2 percent rate is applicable on the basis of certain consumer or subscriber density, average earnings per mile, extenuating circumstances or extreme hardship.

(b) *Loan application, construction and advance of loan funds.* Sections 1700.1 (b) and 1700.3(b) will be applied with respect to applications for insured loans under section 305 of the Rural Electrification Act. Sections 1700.1(c) and 1700.3(c) will be applied with respect to the construction of rural electrification and telephone facilities respectively, and §§ 1700.1(d) and 1700.3(d) will be applied to the advance of funds on account of such insured electrification and telephone loans, respectively.

(c) *REA Bulletins.* REA Bulletins (see §§ 1700.6 and 1701.1) in effect on May 11, 1973, as from time to time amended or supplemented, will be utilized in carrying out REA's loan programs pursuant to the May 11, 1973, Amendments of the Rural Electrification Act (Pub. L. 93-32, 87 Stat. 65) to the extent not inconsistent therewith.

[39 FR 1352, Jan. 8, 1974]

§ 1700.3c Guaranteed loans pursuant to section 306 of the Rural Electrification Act, as amended May 11, 1973.

(a) *General.* These loans are made by any legally organized lending agency and guaranteed in the full amount thereof by the Administrator for purposes provided in the Rural Electrification Act. The loans guaranteed under this section are serviced by the lender. The interest rate on these loans is as agreed upon by the borrower and the lender.

[39 FR 1352, Jan. 8, 1974]

§ 1700.4 Studies, investigations, and reports.

Pursuant to section 2 of the Act, the agency may make or cause to be made studies, investigations, and reports concerning the condition and progress of electrification and telephony in rural areas in the several States and territories and may publish and disseminate information with respect thereto.

§ 1700.5 Loan security activities.

In carrying our its program, and in the interest of loan security, the agency requires of borrowers periodic reports on operations, annual audits, etc., and provides specialized and technical accounting, engineering, and other managerial assistance to borrowers in respect to the construction and operation of their facilities, and to help them establish efficient and economical service in rural areas.

[44 FR 39372, July 6, 1979]

§ 1700.6 Issuances implementing procedure.

There are available from REA, upon request, (a) basic forms of loan agreements, and (b) bulletins issued from time to time which implement the loan agreements and the procedures herein set forth.

PART 1701—PUBLIC INFORMATION

Sec.

1701.1 Public inspection and copying.
1701.2 Indexes.
1701.3 Requests for records.
1701.4 Appeals.

APPENDIX A

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR 1.1–1.16, unless otherwise noted.

SOURCE: 40 FR 16074, Apr. 9, 1975, unless otherwise noted.

§ 1701.1 Public inspection and copying.

(a) 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying.

(b) The Rural Electrification Administration issues from time to time REA Bulletins which implement the procedures set forth in Part 1700 and the loan and security instruments which provide for and secure REA loans. Appendix A to this part identifies and briefly describes each such Bulletin currently in effect. REA also issues REA Bulletins which furnish technical information to assist in the design, construction, operation, and maintenance of borrower's systems. As REA Bulletins are issued, copies are mailed to all borrower's concerned and to others participating in the REA program who may be affected. REA will make all REA Bulletins available for public inspection and copying. REA Bulletins identified in Appendix A to this part also set forth or identify related forms available for utilization by REA borrowers and others. Such forms, including forms of basic loan and security agreements, will also be made available for public inspection and copying. .

(c) REA will make available for public inspection and copying its administrative staff manuals and instructions to staff affecting any member of the public except those exempt from disclosure pursuant to the provisions of 5 U.S.C. 552(b).

(d) Members of the public may request access to such materials maintained by REA at the Office of the Director, Information Services Division, Room 4038, South Building, U.S. Department of Agriculture, Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. Copies of such materials may be obtained in person or by mail.

§ 1701.2 Indexes.

5 U.S.C. 552(a)(2) requires that each agency publish or otherwise make available a current index of all materials required to be made available for public inspection and copying. REA will maintain and publish current indexes and quarterly supplements thereto, providing identifying information for all REA Bulletins and for staff manuals and instructions made available pursuant to § 1701.1. Copies will be available upon request in person or by mail to the Office of the Director, Information Services Division, Room 4038, South Building, U.S. Department of Agriculture, Washington, DC 20250.

§ 1701.3 Requests for records.

Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to Office of the Director, Information Service Division, Rural Electrification Administration, Room 4038, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. A request shall describe the records sought as set forth in 7 CFR 1.3(b). Requests may be submitted in person or by mail. The Director, Information Services Division is hereby delegated to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

§ 1701.4 Appeals.

Any person whose request under § 1701.3 is denied shall have the right to appeal such denial. This appeal shall be submitted in accordance with 7 CFR 13(e) and addressed to the Administrator, Rural Electrification Administration, Room 4053, South Building, U.S. Department of Agriculture, Washington, DC 20250.

APPENDIX A

A current list and summary description of REA Bulletins issued to implement the procedure set forth in Part 1700 and the loan and security instruments which provide for and secure REA loans.[1]

(Approved by the Office of Management and Budget under control numbers 10572-0002, 0572-0003, and 0572-0012.)

(44 U.S.C. 3506)

[40 FR 16074, Apr. 9, 1975, as amended at 47 FR 746, Jan. 7, 1982]

EDITORIAL NOTE: For FR citations affecting REA Bulletins, see "List of CFR Sections Affected" appearing in the Finding Aids section of this volume.

PART 1702—ORGANIZATION AND FUNCTIONS

Sec.
1702.1 General.
1702.2 Office of the Administrator.
1702.3 Administrative and joint program activities.
1702.4 Rural electric program activities.
1702.5 Rural telephone program activities.

AUTHORITY: 7 U.S.C. 901-950b.

SOURCE: 47 FR 23427, May 28, 1982, unless otherwise noted.

§ 1702.1 General.

The Rural Electrification Administration was established by Executive Order 7037, signed by the President on May 11, 1935. Statutory authority was provided by the Rural Electrification Act of 1936 (49 Stat. 1363; 7 U.S.C. 901). The Act established REA as a lending agency with responsibility for developing a program for rural electrification. An October 28, 1949, amendment to the Rural Electrification Act authorized REA to make loans to improve and extend telephone service in rural areas. The Rural Telephone Bank, an Agency of the United States, was established by another amendment to the Rural Electrification Act, approved May 7, 1971. The Administrator of REA serves as the Bank's chief executive with the title of Governor. On May 11, 1973, the Act was further amended to establish a revolving fund and to provide authority for REA to guarantee loans made by other lenders. The offices of the Rural Electrification Administration are located in the South Building of the United States Department of Agriculture at 14th and Independence Avenue, SW., Washington, D.C.

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[1] See 40 FR 16075, Apr. 9, 1975, as amended at 40 FR 31956, July 30, 1975.

§ 1702.2 Office of the Administrator.

(a) *The Administrator* (who also serves as Governor of the Rural Telephone Bank) is appointed by the President, with the advice and consent of the Senate, for a term of 10 years. He functions as the chief administrative official of the Agency under the general supervision and direction of the Under Secretary for Small Community and Rural Development. The Administrator is aided directly by a Deputy Administrator, and Assistant Administrators for the Electric Program, for the Telephone Program, and for Administration. The work is carried on through the offices and divisions described in succeeding paragraphs.

(b) *Legislative Affairs Staff* counsels and advises the Administrator as to policy, program and procedural implications of Federal and State legislative and regulatory matters relating to the REA program. It maintains liaison with other Government agencies concerning such matters. The director of this office reports to the Deputy Administrator.

(c) *Office of Civil Rights Coordinator* formulates and coordinates the Agency's plans, policies, and procedures for a nationwide program of nondiscrimination on the part of the REA borrowers in carrying out borrower programs which comply with provisions of Title VI of the Civil Rights Act of 1964 and Executive Order 11246, as amended by Executive Order 11375. The director of this office reports to the Deputy Administrator.

(d) *Public Information Office* administers the information services program of the Agency to provide borrowers and the public with information concering the operations, status, progress and accomplishments of the rural electrification and rural telephone programs. It provides specialized staff assistance on information and communications techniques to the Agency and to borrowers as requested by line officials and administers the Freedom of Information Act activities of the Agency. The director of this office reports to the Deputy Administrator.

§ 1702.3 Administrative and joint program activities.

(a) *Assistant Administrator Administration* directs and coordinates the general administrative activities of the Agency. He participates with the Administrator and Deputy Administrator, and other officials in planning and formulating the policies of the Agency.

(b) *Office of Budget* administers the administrative and loan budgets program of the Agency and participates in program planning and evaluation. Maintains liaison on budgetary matters with congressional committees, the staff of the Department of Agriculture, the Office of Management and Budget, and other Government agencies.

(c) *Personnel Management Division* administers personnel activities of the Agency including classification and wage administration, employment and placement functions, employee relations and services, and employee development and training. It maintains working relations and liaison on personnel management matters with staff and other agencies of the Department, and other Government agencies.

(d) *Management Services Division* administers Agency activities concerned with centralized statistical and data processing activities, management analysis, cost reduction and operations improvement, and the general administrative service functions of the Agency, including procurement, space, records management, mail, and communications.

(e) *Office of Program Development and Analysis* administers certain specialized staff activities applicable to both the rural electric and rural telephone programs. The services include program analysis, member and community development, labor relations, and borrowers' insurance.

(f) *Accounting and Auditing Division* administers REA activities concerned with electric and telephone borrowers' accounting systems, the auditing of borrowers' records, and with the loan and administrative accounting of the Agency.

§ 1702.4 Rural electric program activities.

(a) *Assistant Administrator—Electric* directs and coordinates the rural electrification program of the Agency. He participates with the Administrator and Deputy Administrator, and other officials in planning and formulating the policies of the Agency.

(b) *Distribution Systems Division* administers rural electrification program responsibilities that relate to distribution-type borrowers nationwide, involving engineering, management, loans and operations analysis, construction, community development, rates, and effective and efficient use of electric energy. It develops and maintains a comprehensive appraisal of the current and long-term financing needs of distribution borrowers, and provides them with loan development guidance. It advises and assists borrowers on the planning, design, construction, and technical operation and maintenance of their systems, and assures their compliance with acceptable engineering practices. This division serves as the primary point of contact between REA and all distribution borrowers' officials and boards of directors, and coordinates distribution-type borrower activities with those of other Agency offices. The line activities are carried out through five area offices within the division which employ field specialists supervised from Washington who have their homes as headquarters centrally located in areas they serve. The five area offices have been assigned geographic areas as follows:

Northeast Area (Maine, New Hampshire, Vermont, New York, New Jersey, Pennsylvania, Ohio, Rhode Island, Connecticut, Massachusetts, Michigan, Indiana, West Virginia, Maryland, Delaware, Virginia, and North Carolina);

Southeast Area (Kentucky, Tennessee, Mississippi, Alabama, Georgia, South Carolina, Florida, Puerto Rico and the Virgin Islands);

North Central Area (North Dakota, South Dakota, Minnesota, Wisconsin, Iowa, and Illinois);

Southwest Area (Missouri, Arkansas, Oklahoma, Louisiana, Texas, New Mexico, and Arizona); and

Western Area (Kansas, Nebraska, Colorado, Wyoming, Montana, Utah, Idaho, Oregon, Washington, Nevada, California, Hawaii and Alaska).

(c) *Power Supply Division* administers rural electrification program responsibilities that relate to power supply borrowers nationwide involving engineering, management, loans and operations analysis, construction, power supply planning and procurement, rates, and effective and efficient use of electric energy. It develops and maintains a comprehensive appraisal of the current and long-term financing needs of power supply borrowers, and conducts detailed review and analysis of borrowers' loan requests. It develops and administers engineering and construction functions related to the planning, design, construction, operation and maintenance of power supply borrowers' generation and transmission systems and serves as the primary point of contact between REA and all power supply borrowers' officials and boards of directors, and coordinates power supply borrower activities with those of other Agency offices.

(d) *Environmental and Energy Requirements Division* develops policies and procedures relating to environmental and energy requirements in connection with the Agency's loan and loan guarantee programs. The division coordinates REA activities on environmental and energy matters with the Office of the Secretary, Department of Energy, Environmental Protection Agency, Council on Environmental Quality, and other agencies. The office provides advice and assistance in the preparation and processing of environmental impact statements and gives advice and assistance to Agency offices and borrowers concerning the environmental aspects of the design, construction, and technical operation and maintenance of power plants and transmission systems. The division conducts required power supply surveys and evaluates alternative methods of supplying borrowers' forecasted power loads.

(e) *Engineering Standards Division* develops practices, standards, specifications and technical data relating to the design, construction, and technical operation and maintenance and other basic engineering factors affecting rural electric distribution and transmission systems. It conducts engineering studies of the operating performance of electric systems' materials and equipment and is responsible for review and approval, through a formal committee structure, of materials and equipment for use on distribution and transmission facilities. The division provides advice and assistance to Agency offices and, as requested, to borrowers concerning its functions.

(f) *Electric Loans and Management Division* is responsible for developing techniques and criteria for evaluating the financial and operating performance of rural electric borrowers. It develops operating practices and procedures for the administration of the rural electric program with respect to retail and wholesale rates. The division develops standards, policies and procedures in connection with loan requirements and processing, and, on referral from the Distribution Systems Division, prepares distribution systems loan applications in final form. It disseminates information in connection with the usage of automatic data processing systems and techniques in the efficient operation of borrowers' systems.

(g) *Energy Management and Utilization Division* develops and administers REA program responsibilities relating to all aspects of the development, financing, construction and use of wind power, solar power, low head hydro, fuel cell, biomass, coal bed gasification, etc., installation; the development of engineering practices, standards, and specifications relating to the use of borrowers' communications and control systems, load management and control systems, and special metering systems; promoting and encouraging borrower development of supplemental resource plant demonstration projects; and the development and dissemination of information on supplemental energy sources and load management and special metering systems.

§ 1702.5 Rural telephone program activities.

(a) *Assistant Administrator—Telephone* directs and coordinates the rural telephone program of the Agency. He participates with the Administrator, and Deputy Administrator and other officials in planning and formulating the policies of the Agency.

(b) *Telephone Area Offices* carry out the line activities of REA's telephone programs. Five area offices, with headquarters in Washington, employ and supervise field specialists who use their homes as headquarters centrally located in areas they serve. Each area office appraises applications for loans and loan guarantees in its assigned geographical area; prepares loan and loan quarantee recommendations; reviews the financial and operating performance of borrowers; analyzes engineering plans, specifications, and construction contracts; reviews and approves completed construction; authorizes advances of funds to borrowers; provides advice and assistance to borrowers concerning loans and the design, construction, management, operation, and maintenance of their telephone systems; and community development. The area office serves as the primary point of contact with the borrowers. The five area offices are assigned geographic areas as follows:

Northeast Area (Maine, New Hampshire, Vermont, New York, Delaware, New Jersey, Pennsylvania, Ohio, Rhode Island, Connecticut, Massachusetts, Michigan, Indiana, West Virginia, Maryland, Virginia, and North Carolina);

Southeast Area (Kentucky, Tennessee, Mississippi, Alabama, Georgia, South Carolina, Florida, Virgin Islands, and Puerto Rico);

North Central Area (North Dakota, South Dakota, Minnesota, Wisconsin, Iowa, and Illinois);

Southwest Area (Missouri, Arkansas, Oklahoma, Louisiana, Texas, New Mexico, and Arizona); and

Western Area (Kansas, Nebraska, Colorado, Wyoming, Montana, Utah, Idaho, Washington, Oregon, Nevada, California, Alaska, Hawaii and Guam).

(c) *Telecommunications Engineering and Standards Division* develops policies, standards, specifications, and technical data relating to the design, construction, and technical operation and maintenance of rural telecommunication systems. This includes engineering studies and analyses of the operating performance of central office, outside plant, transmission, and other general telephone systems material and equipment. The division evaluates new communications network technology and is responsible for the development of criteria, standards and specifications for use in rural communications systems applications. It provides advice and assistance within its subject matter responsibility to Agency officials and to borrowers as requested.

(d) *Telecommunications Management Division* is responsible for the development of proposed management, organization and operating practices for the use of telephone borrowers. It develops techniques and criteria for evaluating the financial and operating performance of rural telephone borrowers. The division develops operating practices and procedures with respect to rates, and the evaluation of telephone systems and facilities. It also develops practices and procedures to analyze customer demand for telecommunication services and products, conducts research and develops training programs in regard to the marketing and sales of new telecommunication services by telephone borrowers. The division provides advice and assistance within its subject matter, responsibility to Agency officials and to borrowers as requested.

PART 1711—ELECTRIC LOANS—ADVANCE OF FUNDS

§ 1711.1 Advances.

(a) *Purpose and amount.* With the exception of minor construction, insured loan funds will be advanced only for projects which are included in an REA approved Borrower's construction workplan or approved amendment and in an approved loan, as amended. Loan fund advances can be requested in an amount representing actual costs incurred but not to exceed 130 percent of the project cost estimate on the approved REA Form 740c, "Costs Estimates and Loan Budget for Electric Borrowers,"[1] as amended. Minor construction is defined as a project costing $25,000 or less. Such projects qualify for advance of loan funds even though they may not have been included in an REA-approved Borrower's construction workplan, amendment to such workplan or approved loan. Total advances requested shall not exceed the total loan amount. All projects for which loan fund advances are requested must be constructed to achieve purposes permitted by terms of the loan contract between the Borrower and REA.

(b) *Certification.* Pursuant to the applicable provisions of the REA loan contract, Borrowers shall certify with each request for funds to be approved for advance that such funds are for projects in compliance with this section and shall also provide for those that cost in excess of $25,000 a contract or work order number as applicable and a workplan cross-reference identification.

For a minor project not included in an REA approved Borrower's construction workplan, the Borrower shall describe the project and do one of the following to satisfy REA's environmental requirements (see 7 CFR Part 1794).

(1) If applicable, state that the project is a categorical exclusion of a type described in 7 CFR 1794.31(b)

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[1] A copy of these forms and publications may be obtained by writing the Rural Electrification Administration, Washington, D.C. 20250.

which normally does not require preparation of a Borrower's Environmental Report (BER); or

(2) If applicable, state that the project is a categorical exclusion of a type that normally requires a BER and then:

(i) Submit the BER with the request for funds to be approved for advance, or

(ii) If applicable, certify that it has analyzed the minor project with respect to a comprehensive service area environmental map and data base collected and used in preparing the BER for its REA-approved Borrower's construction workplan, and that on the basis of that information the minor project will not be located in an environmentally sensitive area or location.

(c) *Noncompliance.* Where insured loan funds are found to have been advanced in noncompliance with this rule, Borrowers will be required to return the appropriate amount of the over advance together with any accrued and unpaid interest to REA. The Administrator will require Borrowers, in order to remedy such noncompliance, to pay an additional amount equal to the interest on the funds over advanced for the period such funds were outstanding, calculated at a rate equal to the difference between the REA loan interest rate and the most recent rate at which REA sold Certificates of Beneficial Ownership (CBO's). While REA will generally permit the amount of over advance returned to be requested subsequently by the Borrower for REA approved projects, nothing herein contained shall be construed to preclude REA from exercising any rights or remedies which REA may have pursuant to the loan contract.

(7 U.S.C. 901 et seq.)

[50 FR 5368, Feb. 8, 1985]

PART 1729—ELECTRIC SYSTEM PLANNING AND DESIGN

Subparts A-B [Reserved]

Subpart C—Electric System Design

Sec.
1729.6 Compliance with National Electrical Safety Code.
1729.7–9 [Reserved]
1729.10 Permitted deviations from REA construction standards.

Subparts A-B [Reserved]

Subpart C—Electric System Design

§ 1729.6 Compliance with National Electrical Safety Code.

(a) All borrowers' new lines and substations shall be constructed and operated in accordance with the requirements of the National Electrical Safety Code (NESC). The applicable edition of the NESC to be followed shall be the latest edition which is effective in accordance with the provisions of that edition. Where local regulations or other REA requirements are more stringent, those requirements shall govern.

(b) The Administrator of REA will consider specific requests to approve construction which is not in accordance with the NESC if the borrower provides evidence satisfactory to the Administrator that an exception is necessary or desirable and in the interests of the Government and the borrower.

(c) Overhead distribution circuits shall be constructed with not less than the Grade C strength requirements as described in Section 26, Strength Requirements, of the NESC when subjected to the loads specified in NESC Section 25, Loadings for Grades B, C, and D. Overhead transmission circuits shall be constructed with not less than the Grade B strength requirements as described in NESC Section 26.

(7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*)

[49 FR 11620, Mar. 27, 1984]

§§ 1729.7—1729.9 [Reserved]

§ 1729.10 Permitted deviations from REA construction standards.

(a) *Structures for raptor protection.* Standard distribution line structures may not have the extra measure of protection needed in areas frequented by eagles and other large birds (raptors) to protect such birds from electric shock due to physical contact with energized wires. Borrowers are allowed to deviate from REA construction standards to provide for raptor protection in the design of overhead line structures in those cases where such protection is required by (1) REA of (2) a Federal, state or local authority with permit or license authority over the proposed construction. Structures which are designed for raptor protection shall be in accordance with *Suggested Practices for Raptor Protection on Powerlines—The State of the Art in 1981*, published by the Raptor Research Foundation, Inc., provided, however, that such structures shall be in accordance with the National Electrical Safety Code unless a specific waiver has been granted by the REA Administrator. Copies of this publication may be purchased from the Raptor Research Foundation, Inc., c/o Department of Veterinary Biology, University of Minnesota, St. Paul, Minnesota 55101. It is also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street, NW., Washington, DC 20408. This incorporation by reference has been approved by the Director of the Office of the Federal Register. Any deviation from the REA construction standards for the purpose of raptor protection, which is not in accordance with the above report, must be approved by REA prior to construction

(b) *Transformer neutral connections.* Where it is necessary to separate the primary and secondary neutrals to provide the required electric service to a consumer, the REA standard transformer connections may be modified in accordance with Rule 97D2 of the National Electrical Safety Code.

(7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*)

[49 FR 11620, Mar. 27, 1984]

PART 1736—ELECTRIC STANDARDS AND SPECIFICATIONS

Sec.

1736.10 General purpose and scope.
1736.20 Establishment of standards and specifications.
1736.30 Inclusion of an item for listing or technical acceptance.
1736.40 Procedure for submission of a proposal.
1736.50 Removal of an item from listing or technical acceptance.
1736.60 List of materials and equipment.
1736.70 Procurement of materials.
1736.97 Incorporation by reference of electric standards and specifications.

AUTHORITY: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*

SOURCE: 48 FR 31853, July 12, 1983, unless otherwise noted.

§ 1736.10 General purpose and scope.

(a) The requirements of this part are based on contractural provisions between REA and the organizations which receive financial assistance from REA.

(b) REA will establish certain specifications and standards for materials, equipment, and construction units that will be acceptable for REA financial assistance for the electric program. Materials and equipment purchased by the electric borrowers or accepted as contractor-furnished material must conform to REA standards and specifications where they have been established and, if included in REA Bulletin 43-5, "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers" (List of Materials), must be selected from that list or must have received technical acceptance from REA. REA, through its Technical Standards Committees, will evaluate certain materials, equipment and construction units, and will determine acceptance.

[50 FR 47710, Nov. 20, 1985]

§ 1736.20 Establishment of standards and specifications.

(a) *National and Other Standards.* REA will utilize standards of national standardizing groups, such as the American National Standards Institute (ANSI), American Wood Preservers' Association (AWPA), the various national engineering societies and the National Electric Safety Code (NESC), to the greatest extent practical. When there are no national standards or when REA determines that the existing national standards are not adequate for rural electric systems, REA will prepare standards for material and equipment to be used on systems of electric borrowers. REA standards and specifications will be codified or listed in § 1736.97, Incorporation by Reference of Electric Standards and Specifications. REA will also prepare specifications for materials and equipment when it determines that such specifications will result in reduced costs, improved materials and equipment, or in the more effective use of engineering services.

(b) *Deviations from Standards.* No member of the REA staff will be permitted to authorize deviations from the standard specifications, or to establish or change the technical standards, or to authorize the use of items that have not received acceptance by the Technical Standards Committees, except as provided for under § 1736.70, or by authorization and/or delegation of authority by the Administrator of REA.

(c) *Category of Items.* Items appearing in the List of Materials are listed by categories of generic items which are used in REA construction standards incorporated by reference in § 1736.97. REA will establish and define these categories and will establish all criteria for acceptability within these categories.

[50 FR 47710, Nov. 20, 1985]

§ 1736.30 Inclusion of an item for listing or technical acceptance.

(a) *Scope.* REA, through its Technical Standards Committees "A" and "B" will determine the acceptability of certain standards, standard specifications, standard drawings, and items of materials and equipment to be used in transmission, distribution and general plant (excluding office equipment, tools, and work equipment, and consumer-owned electric wiring facilities).

(b) *Addresses of Committees.* The address of Technical Standards Committee "A" is: Chairman, Technical Standards Committee "A" (Electric), Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250-1500. The address of Technical Standards Committee "B" is: Chairman, Technical Standards Committee "B" (Electric), Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250-1500.

(c) *Review by Technical Standards Committee "A".* All proposals for listing a product in the List of Materials must be addressed to Technical Standards Committee "A." This committee will consider all proposals made by sponsors of specifications, drawings, materials, or equipment in categories for which REA has established criteria for acceptability. A sponsor may be a manufacturer, supplier, contractor or any other person or organization which has made an application for listing or has requested an action by the committee. Committee "A" will consider all relevant information presented in determining whether an item should be accepted by Technical Standards Committee "A." Formal rules of evidence and procedure shall not apply to proceedings before this committee.

(d) *Action by Technical Standards Committee "A".* (1) Committee "A" may take one of the following actions:

(i) Accept an item for listing without conditions (domestic items only),

(ii) Reject an item (domestic or nondomestic),[1]

(iii) Accept an item for listing with conditions (domestic items only),

(iv) Table an item for a time period sufficient to allow the sponsor to be notified and furnish additional information (domestic or nondomestic),

(v) Grant technical acceptance with or without conditions for a period of one year from the date of notification by REA (nondomestic items only).

(2) All committee decisions regarding the actions listed above must be unanimous. If the vote is not unanimous, the item shall be referred to Technical Standards Committee "B." Written notice of Technical Standards Committee "A's" decision, stating the basis for the decision, will be provided to the sponsor.

(3) Items accepted without conditions by the Technical Standards Committees will be considered to be accepted on a general basis. No restrictions as to quantity or application will be placed on items which have re-

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[1] Nondomestic items are items which do not qualify as domestic products pursuant to REA "Buy American" requirement.

ceived general acceptance. Items accepted subject to certain conditions, such as limited use to gain service experience, or limited use appropriate to certain areas and conditions, will be considered to be accepted on a conditional basis. The conditions will be cited as a part of the listing provided for in § 1736.60, or as part of the technical acceptance for nondomestic items.

(e) *Appeal to Technical Standards Committee "B"*. A sponsor may request a review of an adverse decision by Technical Standards Committee "A" within ten (10) days of notification of such decision by submitting a letter requesting such review to Technical Standards Committee "B" (Electric).

(f) *Action by Technical Standards Committee "B"*. Committee "B" may take any of the actions listed for Committee "A" in Section 1736.30d. However, for a Committee "B" action to be effective it must be by majority vote. Failure to obtain a majority on one of the proposed actions shall mean that the product will not be listed or accepted. Committee "B's" determination shall be based on the record developed before Committee "A" and such additional information as Committee "B" may request. Formal rules of procedure and evidence shall not apply to proceedings before Committee "B." Written notice of Committee "B's" decision, stating the basis of the decision, will be provided to the sponsor.

(g) *Appeal to the Administrator.* In the event of an adverse decision by Committee "B," the sponsor may, within ten (10) days of notification of such decision, request a review of this decision by submitting a letter to the Administrator requesting such a review.

(h) *Change in Design.* REA acceptance of an item will be conditioned on the understanding that no design changes (material or dimensions) affecting the quality, strength, or electrical characteristics of the item shall be made without prior concurrence of Technical Standards Committee "A."

[50 FR 47711, Nov. 20, 1985]

§ 1736.40 Procedure for submission of a proposal.

(a) *Written Request.* Consideration of an item of material or equipment will be obtained by the sponsor through the submission of a written request in an original and five copies addressed to the Chairman, Technical Standards Committee "A" (Electric). The letter must include the catalog number or other identifying number or code as well as a description of the item. In the event that an item being submitted is also intended for consideration by Technical Standards Committee "A" (Telephone), a separate request must be made to the telephone committee. (See Part 1772 of this chapter).

(b) *Technical and Performance Data.* Six copies of the specification of manufacture, drawings and test data must be submitted to the committee. Six copies of the performance history shall also be submitted unless REA determines that such performance history is not reasonably available.

(c) *Sample.* One sample of the item must be submitted to the Chairman, Technical Standards Committee "A," unless REA waives the requirements of the sample. In case of large, bulky or extremely heavy samples, the sponsor should contact the Chairman, Technical Standards Committee "A" (Electric), at the above address, before any sample is shipped.

(d) *Action on Proposal.* REA will inform a sponsor of the action taken on the sponsor's proposal.

[50 FR 47711, Nov. 20, 1985]

§ 1736.50 Removal of an item from listing or technical acceptance.

(a) *Removal Actions.* An item of material or equipment may be removed from the listing or technical acceptance in accordance with the following procedures upon determination that the item is unsatisfactory or has been misrepresented to the owner or REA.

(b) *Notification by the Committee.* The sponsor of an item of material or equipment will be notified in writing of a proposal to remove such item from the listing or technical acceptance.

(c) *Supplemental Information.* Within ten (10) days of receipt of such notification, the sponsor may submit to Committee "A" a letter expressing the sponsor's intent to submit written supplemental technical information relevant to Committee "A's" determination. The sponsor must submit such information within twenty (20) days from the submission of its letter to Committee "A." Committee "A" will have the discretion of making a decision following the expiration of the time periods provided in this paragraph.

(d) *Review by the Technical Standards Committee "A".* Committee "A" will consider all relevant information presented in determining whether an item should be removed from the listing or technical acceptance. Formal rules of evidence and procedure shall not apply to proceedings before Technical Standards Committee "A."

(e) *Action by the Technical Standards Committee "A".* Committee "A" may take one of the following actions:

(1) Order the immediate removal of the item from the listing, or technical acceptance,

(2) Condition the item's continued listing, or technical acceptance,

(3) Recommend a basis of settlement which will adequately protect the interest of the Government, or

(4) Delay the effectiveness of its decision for a time period sufficient to allow the sponsor to appeal to Technical Standards Committee "B."

All committee "A" decisions regarding the actions listed above must be by unanimous vote. If the vote is not unanimous, the item will be referred to Technical Standards Committee "B."

Written notice of Technical Standards Committee "A's" decision, stating the basis for the decision, will be provided to the sponsor.

(f) *Additional Opportunity to Present Information.* At the request of the sponsor, REA may afford additional opportunity for consideration of relevant information. Such additional opportunity may include, without limitation, a meeting between REA and the sponsor in such a forum that REA may determine. In making this decision, REA will consider, among other things, the best interests of REA, its borrowers, and the sponsor, and the best manner to develop sufficient information relating to the proposed action.

(g) *Appeal to the Technical Standards Committee "B".* Within ten (10) days of notification of Committee "A's" decision, a sponsor may appeal in writing to Technical Standards Committee "B" to review Committee "A's" decision, specifying the reasons for such a request. Committee "B's" determination, in response to such request, shall be based on the record developed before Committee "A" and such additional information as Committee "B" may request. Formal rules of precedure and evidence shall not apply to proceedings before Committee "B."

(h) *Action by Technical Standards Committee "B".* Committee "B," by majority vote, may take one of the following actions:

(1) Order the immediate removal of the item from listing, or technical acceptance,

(2) Condition the item's continued listing, or technical acceptance,

(3) Recommend a basis of settlement which adequately protects the interests of the Government, or

(4) Delay the effectiveness of its decision for a time period sufficient to allow the sponsor to appeal to the Administrator of REA.

Failure to obtain a majority vote on any of the above actions shall mean that the product will continue to be listed or accepted.

Written notice of Committee "B's" decision stating the basis of the decision will be provided to the sponsor.

(i) *Appeal to the Administrator.* Within ten (10) days of the receipt of Committee "B's" decision, a sponsor may appeal to the Administrator to review Committee "B's" decision. If an appeal is made, the sponsor shall submit a written request to the Administrator, Rural Electrification, Room 4053, South Building, U.S. Department of Agriculture, Washington, D.C. 20250-1500 specifying the reasons to request reconsideration. The Administrator will have the option to decline the request, in which case the decision of Committee "B" shall stand. If a review is granted, the determination by the Administrator or the Administrator's designee shall be based on the record developed before Committee "A" and Committee "B" and such additional information as the Administrator may request. Formal rules of procedure and evidence shall not apply to the actions of the Administrator.

(j) *Action by the Administrator.* The Administrator may take one of the following actions:

(1) Order the immediate removal of the item from the listing, or technical acceptance,

(2) Condition its continued listing, or technical acceptance, or

(3) Recommend a basis of settlement which adequately protects the interests of the Government.

Written notice of the Administrator's determination, stating the basis for the decision, will be provided to the sponsor.

The Administrator's actions are final.

[50 FR 47711, Nov. 20, 1985]

§ 1736.60 List of materials and equipment.

(a) *General.* Those items of material or equipment accepted by Technical Standards Committee "A" or "B," with the exception of technically accepted nondomestic items, will be listed in the List of Materials. Items which do not qualify as domestic products may be accepted on a technical basis only (technical acceptance) for a period of one year as provided in § 1736.30(c)(1) and will not be included in the List of Materials.

(b) *Publishing and Revisions.* REA will reissue the List of Materials every year, dated July, and issue supplements, if needed, dated October, January, and April of every year. An REA office copy, which is the official current copy, of the List of Materials, will be updated every time changes are made by the Technical Standards Committees.

(c) *Dual Listings.* REA, through its Technical Standards Committees, will accept for listing only one item of a particular type of material or equipment for each manufacturer. If a manufacturer submits an item to perform the identical function of a listed item, REA, through its Technical Standards Committees, may accept that item and remove the one previously listed. REA will list only new items of material and equipment in the List of Materials. Used items will not be considered for listing.

[50 FR 47712, Nov. 20, 1985]

§ 1736.70 Procurement of materials.

(a) *By Owner.* When purchasing the type of materials included in the List of Materials, REA borrowers shall purchase only materials listed in the List of Materials, or materials which have a current technical acceptance by REA and meet the "Buy American" requirement.

(b) *By Contractor.* When performing work for an REA borrower, contractors shall supply only items from the general acceptance pages of the List of Materials, or obtain the borrower's concurrence prior to purchase and use of a technically nondomestic item or any item listed on a conditional basis.

(c) *Procurement of Unlisted Items.* (1) The borrower shall request prior approval from REA for use of an item that does not fall in categories established by REA in the List of Materials for which acceptability has been established by the Technical Standards Committees.

(2) REA will also determine, on a case-by-case basis, whether to allow use of an unlisted item in emergency situations and for experimental use or to meet a specific need. For purposes of this Part 1736, an emergency shall mean a situation wherein the supply of listed material and equipment from the industry is not readily available, or the standard designs are not applicable to the borrower's specific problem under consideration.

(3) REA will make arrangements for test or experimental use of newly developed items requiring limited trial use. REA, working with the borrower and the manufacturer, will establish test locations for the items to facilitate installation and observation.

[50 FR 47712, Nov. 20, 1985]

§ 1736.97 Incorporation by reference of electric standards and specifications.

(a) The following electric bulletins have been approved for incorporation by reference by the Director of the Office of the Federal Register. The bulletins containing construction standard (50-1 to 50-14) and Bulletin 50-18 (DT-5C), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bulletins containing specifications for materials and equipment (50-15 to 50-99) may be obtained from the Rural Electrification Administration, Administrative Services Division, Room 0175-S, Washington, D.C. 20250.

The bulletins are available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street, NW, Washington, D.C. 20408. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(b) *List of Bulletins.*

Bulletin 50-1 (T-805), Electric Transmission Specifications and Drawings (2-73)
Bulletin 50-3 (D-804), Specifications and Drawings for 12.5/7.2 kV Line Construction (4-83)
Bulletin 50-5 (D-803), Specifications and Drawings for 14.4/24.9 kV Line Construction (9-69)
Bulletin 50-6 (D-806), Specifications and Drawings for Underground Electric Distribution (1-75)
Bulletin 50-15 (DT-3), REA Specifications for Pole Top Pinswith 1⅜" Diameter Lead Thread (1-51)
Bulletin 50-16 (DT-4), REA Specifications for Angle Suspension Brackets (3-52)
Bulletin 50-17 (DT-5B), REA Specifications for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys (Nov. 6, 1985) Bulletin 50-18(DT-5C), REA Specification for Wood Poles, Stubs, and Anchor Logs (Nov. 6, 1985)
Bulletin 50-18 (DT-5C), REA Specification for Wood Poles, Stubs and Anchor Logs (1-82)
Bulletin 50-19 (DT-7), REA Specifications for Clevis Bolts (8-53)
Bulletin 50-23 (DT-18), REA Specifications for 60 Wood Crossarm Braces (2-71)
Bulletin 50-24 (DT-19), REA Specification for Quality Control and Inspection of Timber Products (Nov. 6, 1985)
Bulletin 50-31 (D-3), REA Specifications for Pole Top Pins with 1" Diameter Lead Threads (2-79)
Bulletin 50-32 (D-4), REA Specifications for Steel Crossarm Mounted Pins with 1" Diameter Lead Threads (10-50)
Bulletin 50-33 (D-5), REA Specifications for Single and Double Upset Spool Bolts (2-51)
Bulletin 50-34 (D-6), REA Specifications for Secondary Swinging Clevises (12-70)
Bulletin 50-35 (D-7), REA Specifications for Service Swinging Clevises (9-52)
Bulletin 50-36 (D-8), REA Specifications for Service Deadend Clevises (9-52)
Bulletin 50-40 (D-14), REA Specifications for Pole Top Brackets for Channel Type Pins (9-51)
Bulletin 50-41 (D-15), REA Specifications for Service Wireholders (11-51)
Bulletin 50-55 (T-2), REA Specifications for Overhead Ground Wire Support Brackets (5-53)
Bulletin 50-56 (T-3), REA Specifications for Steel Plate Anchors for Transmission Lines (12-53)
Bulletin 50-60 (T-9), REA Specification—Single Pole Steel Structures, Complete with Arms (12-71)
Bulletin 50-70 (U-1), REA Specification for 15 kV and 25 kV Primary Underground Power Cable (6-84)
Bulletin 50-72 (U-4), REA Specification for Electrical Equipment Enclosures (5-35 kV) (10-79)
Bulletin 50-73 (U-5), REA Specifications for Pad-Mounted Transformers (Single and Three-Phase) (1-77)
Bulletin 50-74 (U-6), REA Specification for Secondary Pedestals (600 Volts and Below) (10-79)
Bulletin 50-91 (S-3), REA Specifications for Step-Down Distribution Substation Transformers (34.4-138 kV) (1-78)
Bulletin 50-92 (S-4), REA Specifications for Step-Up Substation Transformers (2-63)

(7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*)

[48 FR 31853, July 12, 1983, as amended at 49 FR 24512, June 14, 1984; 50 FR 47716, Nov. 20, 1985]

PART 1772—TELEPHONE STANDARDS AND SPECIFICATIONS

Sec.
1772.3 Field trials.
1772.97 Incorporation by reference of telephone standards and specifications.

AUTHORITY: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

§ 1772.3 Field trials.

(a) Except as covered in Bulletin 345-3, no loan funds shall be advanced for any product if any item to be included in the project is not included in the "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers," REA Bulletin 344-2. When new items of materials or equipment are considered for acceptance by REA or when a previously accepted item has been subjected to such major modifications that its suitability cannot be determined based on laboratory data and/or field experience, a field trial shall be required if REA so determines. This field trial consists of limited field installations of the materials or equipment in closely monitored situations designed to determine, to REA's satisfaction, their operational effectiveness under actual field conditions. Field trials are to be used only as a means for determining, to REA's satisfaction, the operational effectiveness of a new or revised product under actual field conditions. Both the manufacturer and borrower are responsible for assuring that the field trial is carried out and that the required information on the product's performance is received by REA in a timely manner. The use of materials or equipment derived from new inventions or concepts untried within the telephone industry is defined as "an experiment" and shall be handled as a special case using procedures considered appropriate by REA to meet the individual experiment.

(b) To qualify for a field trial, the new and improved materials and equipment must appear to REA to offer one or more of the following benefits:

(1) Improved performance.

(2) Decreased cost.

(3) Broader application.

(c) The item of material or equipment subject to field trial may be only part of the total amount of materials or equipment included in a bid or it may be the key component of the facility or system provided; therefore, REA shall have authority to require that a satisfactory plan be provided to maintain or restore service in the event that the materials and equipment fail to meet established performance requirements. REA shall limit the quantity of new materials and equipment installed on any field trial and shall also limit the number of field trials for a given product to what REA considers reasonable to provide the necessary information.

(d) A borrower may participate in a field trial only if, in REA's opinion, the borrower possesses:

(1) Adequate financial resources so that no delay in the project will result from lack of funds.

(2) The finanical stability to overcome difficulties which may result from an unsuccessful field trial. The borrower must be able to restore and maintain service until the manufacturer meets its financial obligations with respect to the field trial.

(3) Qualified personnel to enable it to discharge its responsibilities.

(4) A record satisfactory to REA for maintaining equipment and plant facilities and for providing REA with information when requested.

(5) Willingness to participate in the field trial and awareness of the effort and responsibility this entails.

(e) The test site for the field trial shall be, in REA's opinion, readily accessible and provide the conditions, such as temperature extremes, high probability of lightning damage, etc., for which the product is being evaluated. The material or equipment involved shall be covered by an REA specification or a suitable standard acceptable to REA. The supplier is required to submit test data to show conformance with the applicable specification or standard. Further testing shall be performed if required by REA personnel.

(f) A field trial shall normally continue for a minimum of six months, or for a longer period of time determined by REA to be required to obtain conclusive data that the item either fulfills all requirements or is unacceptable. Either the borrower or supplier may terminate a field trial at any time, in accordance with their contractural agreement. Such termination, if prior to the time required by REA, shall constitute withdrawal of the product from consideration by REA. REA has authority to terminate field trials based on its determination that the equipment is not performing satisfactorily and that this lack of performance may, in REA's opinion, cause service degradation or hazards to life or property.

(g) Field trials shall be conducted in accordance with the instructions set forth in this regulation and the agreement relating to the specific application. Both the supplier and the borrower shall agree, and obtain REA approval before the start of the trial, on the following:

(1) The specific purpose of the field trial;

(2) Ownership of items during trial;

(3) Starting date and duration;

(4) Responsibility for costs and removal of items in the event of noncompliance with the specification or purpose intended and arrangements for service continuity or restoration;

(5) Responsibility for testing, test equipment and normal operation and maintenance during the trial period;

(6) Availability of test equipment on site during the trial period; and

(7) Responsibility for spare parts and components consumed during the trial period.

(h) Both the supplier and the borrower shall keep REA informed of the status of a field trial. These reports shall not be limited to details of problems of failures encountered during installation and subsequent operation but shall include information on progress of the field trial. If these reports are not received in accordance with the requirements of the REA Form 399b, REA shall have the authority to deny or suspend loan funds related to these products until the delinquent reports are received.

(i) Before a borrower purchases materials or equipment that require a field trial, prior approval must be obtained from REA and REA Form 399b, REA Telecommunications Equipment Field Trial (available from the Director, Administrative Services Division, Rural Electrification Administration, Room 0175, South Building, U.S. Department of Agriculture, Washington, D.C. 20250) will be completed by REA and must be signed by both the borrower and supplier as an indication that they understand their responsibilities in the field trial. Assurance must also be obtained from REA that the "particular item" that is the subject of the field test is eligible for a field trial. To obtain this assurance, any proposal for use of an item on a field trial basis shall be forwarded to the Chief, Area Engineering Branch, for review and approval.

(j) Procedures for establishing field trials for the various categories of equipment after REA has approved the 399b:

(1) *Electronic transmission equipment.* The procedure set forth in Bulletin 385-2 "Purchasing and Installing Special Electronic Equipment" shall be followed except that the Special Equipment Contract (Including Installation), REA Form 397, shall be used in all purchases of electronic equipment for field trials. In addition, the borrower and supplier shall execute three copies of a "Supplemental Agreement to Equipment Contract for Field Trial," REA Form 399, or a "Supplemental Agreement to Equipment Contract for Field Trial (Secondary—Delivery, Installation, Operation)", REA Form 399a, as well as three copies of the REA Form 399b, "REA Telecommunications Equipment Field Trial", and forward them, together with three copies of the executed contract and specifications, to the Chief, Area Engineering Branch. A limited number of copies of REA Forms 399, 399a, and 399b are available from REA upon request from the Director, Administrative Services Division, Rural Electrification Administration, Room 0175, South Building, U.S. Department of Agriculture, Washington, DC 20250. Additional copies may be reproduced by the user as needed. This category includes:

(i) Voice frequency repeaters;

(ii) Trunk carriers;

(iii) Subscriber carrier;

(iv) Point-to-point radio (Microwave);

(v) Coaxial cable system electronics;

(vi) Fiber optic cable system electronics;

(vii) Multiplex equipment;

(viii) Mobile and fixed radiotelephone; and

(ix) Other items of electronic equipment associated with transmission.

(2) *Central office equipment.* The procedure set forth in Bulletin 384-1 "Purchasing and Installing Central Office Equipment" shall be followed except that "The Central Office Equipment Contract (Including Instal-

lation)", REA Form 525, shall be used to purchase switching equipment for field trials. In addition, the borrower and supplier shall execute three copies of a "Supplemental Agreement to Equipment Contract for Field Trial," REA Form 399, or a "Supplemental Agreement to Equipment Contract for Field Trial (Secondary—Delivery, Installation, Operation)", REA Form 399a, as the case may be, as well as three copies of the REA Form 399b, "REA Telecommunications Equipment Field Trial", and forward them, together with three copies of the executed contract and specification to the Chief, Area Engineering Branch. This category includes:

(i) Central office dial equipment;

(ii) Direct distance dialing equipment;

(iii) Automatic number identification equipment;

(iv) Line concentrators;

(v) Remote switching equipment; and

(vi) All other items of equipment associated with switching equipment, such as loop extenders.

(3) Protection equipment and materials, outside plant equipment and materials, and all other equipment and materials, which includes all items not covered in paragraph (j) (1) or (2) of this section, shall be handled as described in Bulletin 344-1 "Methods of Purchasing Materials and Equipment for Use on Systems of Telephone Borrowers" except that the borrower's purchase order form is to be used for purchasing materials and equipment in these categories. In addition, the borrower and supplier shall execute three copies of the "Supplemental Agreement to Equipment Contract for Field Trial," REA Form 399, or a "Supplemental Agreement to Equipment Contract for Field Trial (Secondary—Delivery, Installation, Operation)", REA Form 399a, as the case may be, as well as three copies of the REA Form 399b, "REA Telecommunications Field Trial", and forward them, together with three copies of the purchase order to the Chief, Area Engineering Branch.

(k) For all items except Electronic Central Office Equipment, suppliers and manufacturers must furnish warranties or guarantees satisfactory to REA against the failure of the material and equipment used in the field trial. Terms of this warranty must not be less than the provisions of the standard warranty included in the "Telephone System Construction Contract", REA Form 515, or the warranty provided for similar materials and equipment included in the "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers", REA Bulletin 344-2. In lieu of a warranty, materials and equipment are sometimes furnished to REA borrowers on a reduced or no cost basis. Terms of such arrangements are subject to REA approval and should be fully covered in field trial proposals forwarded by borrowers to the Chief, Area Engineering Branch for review and approval. For the purchase of electronic central office equipment, suppliers and manufacturers are to provide warranties as provided in the applicable REA contract form: REA Form 397 for electronic equipment and REA Form 525 for central office equipment. Forms 399 and 399a, which apply to field trials of these devices, specify that the term of the warranty does not begin until the satisfactory conclusion of the field trial.

(7 U.S.C. 901 *et seq.*)

[49 FR 28394, July 12, 1964]

§ 1772.97 Incorporation by reference of telephone standards and specifications.

The following telephone Bulletins have been approved for incorporation by reference by the Director of the Office of the Federal Register on December 30, 1983. Bulletin 345-150 (Form 515a) containing the specifications and drawings for construction of buried cables and wires may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The remaining Bulletins containing construction standards and specifications for materials and equipment may be obtained from the Rural Electrification Administration, Administrative Services Division, Room 0175-S, Washington, D.C. 20250.

The bulletins are available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, D.C. 20408. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

REA Bulletin No	Specification No	Date last issued	Title of standard or specification
345-4	PE-16	Jan 1972	REA specification for wood crossarms (solid and laminated) Transmission timbers and pole keys.
345-6	PC-2	Jan 1978	REA standard for splicing plastic-insulated cables.
345-13	PE-22	Jan 1983	REA specification for aerial and underground telephone cable.
345-18	PE-20	Aug 1974	REA specification for plastic-insulated, plastic-jacketed station wire.
345-22	PE-26	Oct. 1978	REA specification for voice frequency loading coils.
345-27	PE-31	Feb 1974	REA specification for D-66/H-88 junction impedance compensators.
345-29	PE-38	Feb 1982	REA specification for self-supporting cable.
345-30	PE-40	Feb 1971	REA specification for ringing generator equipment.
345-39		Aug. 19, 1985	REA Specification for Telephone Station Protectors.
345-46	PE-48	July 1968	REA specification for support clamps for use with figure 8 distribution wire and figure 8 cable.
345-50	PE-60	Sept. 1979	REA specification for trunk carrier systems.
345-52	PC-5A	Jan 1980	REA standard for service entrance and station protector installations.
	PC-5B	April 1981	REA standard for station installations.
345-53	PE-70	Mar 1971	REA specification for encapsulation, splice closure, and pressure blocks.
345-54	PE-52	Dec. 1971	REA specification for telephone cable splicing connectors.
345-55	PE-61	Dec. 1973	REA specification for central office loop extenders and loop extender voice frequency repeater combinations.
345-59	PE-71	Mar 1971	REA specification for inside wiring cable.
345-61	PE-72	Mar 1971	REA specification for switchboard cable.
345-63	PC-4	May 1976	REA standard for acceptance tests and measurements of telephone plant.
345-65	PE-65	Mar. 22, 1985	Specification for shield bonding connectors.
345-66	PE-64	Sept 1979	REA specification for subscriber carrier systems.
345-67	PE-39	Nov 1981	REA specification for filled telephone cables.
345-69	PE-29	Jan 1978	REA specification for two-wire voice frequency repeater equipment.
345-72	PE-74	Oct 1985	REA specification for filled splice closures.
345-75	PE-65	Jan 1977	REA specification for electronic trunk circuits.
345-78	PE-78	Feb 1980	REA specification for carbon arrester assemblies for use in protectors.
345-80	PE-75	July 1978	REA specification for flat oval telephone cords.
345-82	PE-82	June 1980	REA specification for wood telephone pedestal stubs.
345-86	PE-86	Oct 1982	REA specification for filled buried service wire.
345-87	PE-87	Dec 1983	REA specification for terminating (TIP) cable.
345-89	PE-89	Oct 31, 1985	REA specification for filled telephone cables with expanded insulation.
345-150	Form 515a	Sept. 1979	REA specifications and drawings for construction of direct buried plant.
345-151	Form 515c	Sept 1979	REA specifications and drawings for conduit and manhole construction.
345-152	Form 515d	Sept 1979	REA specifications and drawings for underground cable installation.
345-153	Form 515f	Sept 1979	REA specifications and drawings for construction of pole lines, aerial cables and wires.
345-154	Form 515g	Sept 1979	REA specifications and drawings for service entrance and station protector installations.
345-165	Form 522	June 1984	REA general specification for digital, stored program controlled central office equipment.
345-156	Form 524	Jan 1976	REA general specification for common control central office equipment.
345-168	Form 538	Oct 1977	REA specification for equipment for direct distance dialing.
345-169	Form 558	Sept 1966	REA specification for dial central office equipment.
345-180	Form 397a	Jan 1963	REA specifications for voice frequency repeaters and voice frequency repeatered trunks.
345-183	Form 397d	June 1970	REA design specifications for point-to-point microwave radio systems.
345-184	Form 397e	May 1971	REA design specifications for mobile and fixed dial radio telephone equipment.
345-185	Form 397g		Performance specification for line concentrators.

REA Bulletin No.	Specification No.	Date last issued	Title of standard or specification
345-89	PE-89	Oct 31, 1985	REA Specification for filled telephone cables with expanded insulation.

(7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*)

[48 FR 57470, Dec. 30, 1983, as amended at 49 FR 28236, July 11, 1984; 50 FR 11498, Mar. 22, 1985; 50 FR 33331, Aug. 19, 1985; 50 FR 37508, Sept. 16, 1985; 50 FR 43695, Oct. 29, 1985; 50 FR 46630, Nov. 12, 1985]

PART 1785—LOAN ACCOUNT COMPUTATIONS, PROCEDURES, AND POLICIES

Sec.
1785.1—1785.16 [Reserved]
1785.17 Basis dates and termination of unadvanced loan fund commitments—electric.

§§ 1785.1—1785.16 [Reserved]

§ 1785.17 Basis dates and termination of unadvanced loan fund commitments—electric.

(a) *Termination of Loan Fund Advances*: Loan contracts or amendments thereto providing for insured loans approved by the Administrator on or after June 1, 1984, shall provide that the obligation of the Government to advance insured loans pursuant to such loan contract, as amended, shall terminate without further action by the Government after four years from the date of the loan contract or the most recent amendment thereto, unless the Administrator shall agree, in writing, to an extension of the obligation.

(b) *Request for extension*: The Administrator may agree to an extension of the obligation of the Government to advance loan funds if the borrower demonstrates to the satisfaction of the Administrator that the loan funds continue to be needed for approved loan purposes (i.e., facilities included in an REA-approved construction workplan). To apply for an extension, Borrowers must send to the appropriate REA office, at least 120 days before the Government's obligation to advance loan funds terminates, the following: (1) A certified copy of a board resolution requesting an extension of the obligation of the Government to advance loan funds; (2) evidence that the unadvanced loan funds continue to be needed for approved loan purposes; and (3) notice of the estimated date for completion of construction. If the Administrator approves a request for an extension, the Administrator shall notify the borrower in writing of the extension and the terms and conditions thereof.

(7 U.S.C. 901 *et seq.*)

[49 FR 22267, May 29, 1984]

PART 1794—ENVIRONMENTAL POLICIES AND PROCEDURES

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APPENDIX A—PROCEDURE FOR PROPOSALS WHICH NORMALLY REQUIRE AN EIS

AUTHORITY: National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508); Executive Order (EO) 11988, "Floodplain Management"; and EO 11990, "Protection of Wetlands".

SOURCE: 49 FR 9550, Mar. 13, 1984, unless otherwise noted.

Subpart A—General

§ 1794.1 Purpose.

This part contains the policies and procedures of the Rural Electrification Administration (REA) for implementing the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1508); and certain related statutes, regulations and orders. Among those statutes, regulations and orders are the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Advisory Council on Historic Preservation regulations on Protection of Historic and Cultural Properties (36 CFR Part 800); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Executive Order (EO) 11514, "Protection and Enhancement of Environmental Quality"; EO 11593, "Protection and Enhancement of the Cultural Environment"; EO 11988, "Floodplain Management"; EO 11990, "Protection of Wetlands"; and the Farmland Protection Policy Act (Pub. L. 97-98).

§ 1794.2 Actions requiring environmental review.

The provisions of Part 1794 apply to proposed administrative actions by REA including, without limitation, loans, loan guarantees, reclassification of loan funds, lien accommodations, and approvals provided pursuant to loan contracts and security instruments (*e.g.*, approvals of the use of the general funds).

§ 1794.3 Compliance.

The effective date of provisions contained in Part 1794 is the date of publication of the final rule in the FEDERAL REGISTER. Any environmental document accepted or prepared by REA prior to the effective date may be developed in accordance with the REA environmental requirements in effect at the time the document was accepted or prepared by REA.

§ 1794.4 Trivial violations.

It is the intent of this part that a trivial violation of its provisions will not give rise to an independent cause of action.

§ 1794.5 Responsible officials.

The agency contact points for environmental matters shall be the Assistant Administrator, Electric or Telephone (as appropriate); Rural Electrification Administration; U.S. Department of Agriculture; South Building, Washington, DC 20250. The Assistant Administrators, Electric and Telephone, are responsible for determining the proper definition of proposals and the need for the preparation and approval of draft Environmental Impact Statements (EIS). Final EIS's will be issued and approved by the Administrator.

§ 1794.6 Metric units.

It is REA's policy to prepare environmental documents using metric units with British system equivalents in parentheses. Environmental documents prepared by or for an REA borrower (Borrower) should follow the same format.

§ 1794.7 Guidance.

For further guidance in the preparation of notices and environmental documents REA has prepared an REA Environmental Guide. A copy of this REA Environmental Guide is available upon request to the Assistant Administrator, Electric or Assistant Administrator, Telephone; Rural Electrification Administration; U.S. Department of Agriculture, Washington, DC 20250.

Subpart B—Implementation of the National Environmental Policy Act

§ 1794.10 Apply NEPA early in the planning process.

The environmental review process requires early coordination with and involvement of REA. Borrowers should consult with REA at the earliest stages of planning for any proposal which may require REA action. Since planning efforts and environmental evaluation for power supply facilities, including power plants, transmission lines, coal or other fuel development, are interrelated, these activities should take place within the same time frame.

§ 1794.11 Consideration of alternatives.

In determining what are reasonable alternatives, REA will consider a number of factors including, but not limited to, state of the technology, availability of resources and the time frame in which the identified need must be fulfilled.

§ 1794.12 Public involvement.

In carrying out its responsibilities under NEPA, REA shall make diligent efforts to involve the public in the environmental review process through the following means:

(a) REA notices required by Part 1794 shall be published in the FEDERAL REGISTER and shall describe the nature, location and extent of the proposed action and indicate the availability and location of additional information.

(b) Borrower's notices, when required by this part or otherwise required by REA, shall consist of both a legal notice and a paid advertisement published in a timely manner in a newspaper or newspapers of general circulation in the counties in which the proposal will take place or such other places as REA determines. It shall generally describe the nature, location and extent of the Borrower's proposal and indicate the availability and location of additional information. If both the paid advertisement and legal notice appear in the same edition, the advertisement need not be lengthy and can refer the reader to the legal notice for a more detailed explanation. The Borrower shall consult with REA prior to issuance of Borrower's notices where an EIS or Environmental Assessment (EA) will be prepared.

(c) The Borrower shall submit to REA, as soon as practicable after publication, copies and publication dates of all Borrower's legal notices and paid advertisements published. A copy of all comments received by the Borrower (including the Borrower's position, if any) concerning environmental aspects of the proposal shall be provided to REA in a timely manner.

(d) Public hearings or meetings may be held at reasonable times and locations concerning environmental aspects of a proposed action in all cases where, in the Assistant Administrator's opinion, the need for hearings or meetings is indicated in order to develop adequate information on the environmental implications of the proposed action. The following shall be required in connection with a meeting or a hearing:

(1) Where an environmental document is the subject of the hearing or meeting, that document will be made available to the public at least ten (10) days in advance.

(2) Any person, organization or government body desiring to make a statement at the hearing or meeting may make such statement in writing or orally. Public hearings or meetings normally will be informal and will generally be confined to the environmental aspects of the proposal.

(3) REA notice shall be published at least thirty (30) days before the hearings or meetings. The Borrower's notice of the hearings or meetings shall be published at least ten (10) days but no more than thirty (30) days before the hearings or meetings. REA shall determine the counties in which the Borrower's notice shall be published in newspapers of general circulation to assure that persons most likely to be affected by the proposal will be made aware of the hearings. The notice shall present the date, time, location and purpose of the hearing or meeting. If an environmental document is the subject of the hearing or meeting, the notice shall inform the public where it can be obtained or is available for review.

(e) A list of REA administrative actions for which EIS's and EA's are being prepared or contemplated will be available for public inspection at REA's offices in Washington, DC.

§ 1794.13 Interagency involvement.

In carrying out its responsibilities under NEPA, REA shall, to the extent practicable, coordinate its environmental review and combine its meetings and hearings with those of other Federal, state and local agencies. The Borrower shall inform REA of potential involvement of other agencies in the proposal at the earliest practicable time to facilitate such coordination.

Subpart C—Provisions Applicable to EA or EIS Preparation

§ 1794.20 Interagency coordination.

(a) Whenever practicable, REA will encourage the use of a lead agency in preparation of an EIS or EA so that a single document and review process will cover all Federal agency actions arising from the proposal or directly related group of proposals. It is the policy of REA to volunteer to act as lead agency in the preparation of an EA or EIS when the Borrower so requests, and when REA would normally prepare an EA or EIS for the proposal.

(b) Where REA acts as a cooperating agency, REA shall rely upon the lead agency's procedures for implementing NEPA and CEQ regulations in the preparation and issuance of an EA or EIS, unless the lead and cooperating agencies agree to a modification of these procedures.

(1) REA shall request that the lead agency indicate that REA is a cooperating agency in all NEPA related notices published for the proposal. In addition, REA shall request that the lead agency permit REA to review and comment on the EA or draft and final EIS prior to issuance.

(2) The Borrower shall inform REA in a timely manner of its involvement in a proposal where another Federal agency is preparing an EIS or EA to permit REA to adequately fulfill its duties as a cooperating agency.

(c) Where practicable and in order to eliminate duplication and delay, REA will coordinate its NEPA process with state and local environmental procedures. Where state or local agencies control siting of electric transmission lines or electric generating stations, REA shall consult and coordinate with those state and local agencies in determining what are the reasonable siting and route alternatives.

§ 1794.21 Limitations on actions during the NEPA process.

In determining which Borrower activities related to a proposal requiring development of an EA or EIS may be approved prior to completion of the NEPA process, REA must determine, among other matters that:

(a) The activity will not have an adverse environmental impact. For example, purchase of water rights, optioning or transfer of land title, or continued use of land as historically employed will not have an adverse environmental impact. However, site preparation or construction at or near the proposed site (*e.g.*, rail spur) or development of a related facility (*e.g.*, opening a captive mine) normally will have an adverse environmental impact.

(b) The expenditure is "minimal." To be minimal the expenditure:

(1) Must not exceed the amount of loss which the borrower could absorb without jeopardizing the government's security interest in the event the proposed project is not approved by the Administrator, and

(2) Must not compromise the objectivity of REA's environmental review. Notwithstanding other considerations, expenditures up to 10 percent of the proposed project cost normally will not compromise REA's objectivity.

§ 1794.22 Tiering.

It is REA's policy to tier EIS's and EA's where:

(a) It is practicable, and

(b) There will be a reduction of delay and paperwork, or where better decisionmaking will be fostered.

[49 FR 9550, Mar. 13, 1984; 49 FR 10083, Mar. 19, 1984]

Subpart D—Classification of Proposals

§ 1794.30 Control.

For environmental review purposes, REA has identified and set forth categories of Borrower proposals. A Borrower or Borrowers may propose to participate with other parties in the ownership of a project where the Borrowers do not have sufficient control and responsibility to alter the development of the project. In such a case the proposal will be considered a categorical exclusion regardless of the category into which the proposal would otherwise be included. Where the Borrowers propose to cumulatively own 5 percent or less of a project, the proposal will normally be considered a categorical exclusion. Where the Borrowers propose to cumulatively own 33⅓ percent or more of a project, the proposal will be treated in its usual category. Where the Borrowers propose to cumulatively own more than 5 percent but less than 33⅓ percent of a project, REA will determine whether the Borrowers have sufficient control and responsibility to alter the development of the project. Consideration will be given to such factors as: (a) Whether construction would be completed regardless of REA financing assistance; (b) the stage of project planning and construction; (c) total Borrower participation; (d) participation percentage of each utility in the project; and (e) managerial arrangements and contractual provisions.

§ 1794.31 Categorical exclusions (proposals normally requiring neither an EIS nor an EA).

(a) Borrower proposals that do not individually or cumulatively have a significant effect on the environment and do not normally involve significant unresolved conflicts concerning alternate use of available resources, do not require an EIS or EA. In order to provide for extraordinary circumstances, such proposals may require development of a Borrower's Environmental Report (BER) or the equivalent.

(b) Certain types of Borrower proposals do not require a BER. Proposals of this type are subject to the requirements of § 1794.41. Proposals within this classification are:

(1) Purchase of land where use will remain unchanged.

(2) Routine approvals made pursuant to loan and security documents (*e.g.*, contracts for bulk commodities,

fuel, goods and services, capital credit retirements, technical specifications).

(3) Agreements for transmission, wheeling, interconnection with, power purchase from, or sale to other utilities where no associated Borrower construction or financing of construction is involved.

(4) Additional or substitute financing assistance for proposals which have previously received environmental review and approval from REA, provided that environmental considerations have not changed.

(5) Rehabilitation or reconstruction of roads, railroad tracks, roadbed, bridges and other transportation facilities within transportation rights-of-way or generating facility sites where there is no substantial increase in use. A description of the rehabilitation or reconstruction shall be provided to REA.

(6) Primary fuel or mineral contracts where, considering all the facts and circumstances, the Borrower does not have effective control over or responsibility to alter the development of the specific fuel or mineral source (*e.g.*, mine).

(7) Changes or additions to existing substations or switching stations or external changes to buildings or small structures requiring new physical disturbance or fencing of less than 0.4 hectare (0.99 acre). A description of changes and additions shall be provided to REA.

(8) Internal modifications or equipment additions (*e.g.*, computer facilities, relocating interior walls) to small structures or buildings.

(9) Internal or minor external changes to electric generating or fuel processing facilities and related support facilities where there is negligible impact on the outside environment. A description of the changes shall be provided to REA.

(10) Ordinary maintenance or replacement of equipment or small structures (*e.g.*, line support structures, microwave facilities, valves).

(11) The construction of telephone and communication lines and cables at existing power related facilities sites.

(12) Supervisory control and data acquisition systems (SCADA) and energy management systems involving no new external construction.

(13) Testing work (*e.g.*, test borings or cores, water test wells).

(14) Studies and engineering undertaken to define a proposal or alternatives sufficiently so that environmental effects can be assessed.

(15) The construction of electric power lines within an existing substation, switching station or electric generating facility site. A description of the facilities to be constructed shall be provided to REA.

(16) Contracts for certain items of equipment which are part of a proposal for which REA is preparing an EA or EIS, and which meet the limitations on actions during the NEPA process set forth in § 1794.21 (*e.g.*, long lead time items such as turbines or boilers).

(17) Internal REA administrative actions (*e.g.*, personnel actions, procurement) and REA bulletins that do not concern environmental matters or substantial facility design, construction or maintenance practices.

(c) Certain types of Borrower proposals normally require Borrower submission of a BER or its equivalent. Proposals of this type are subject to the requirements of § 1794.42. Proposals within this classification are:

(1) The construction of electric power lines and associated facilities designed for or capable of operation at a nominal voltage of either:

(i) Less than 69 kV (low side) or

(ii) Less than 230 kV (low side) if both:

(A) No more than 40 kilometers (24.85 miles) of power line are involved, and

(B) Substations and switching stations require new physical disturbance or fencing of no more than 2 hectares (4.94 acres) at any single site nor more than 4 hectares (9.88 acres) for all sites.

(2) The construction of electric power lines where less than 5 kilometers (3.11 miles) of line are involved.

(3) The construction of telephone and communication lines, cables and facilities.

(4) The construction of other small structures or buidings such as microwave facilities, cooperative headquar-

ters, maintenance facilities, etc., involving no more than 2 hectares (4.94 acres) of physical disturbance or fencing.

(5) Participation by a Borrower(s) in any proposed project where total Borrower financial participation in the underlying project will be five (5) percent or less.

(6) Purchase of existing facilities or a portion thereof where use or operation will remain unchanged and which presently are in compliance with environmental laws and regulations.

(7) Additional bulk commodity storage (*e.g.*, coal, peat, lignite, limestone, etc.) within existing generating station boundaries.

(8) SCADA and energy management systems which require new external construction.

(9) Reconductoring or upgrading of existing telephone or power lines where either the same or substantially equivalent support structures at the approximate existing support structure locations are used.

(10) Proposals designed to reduce the amount of pollutants released into the environment (*e.g.*, precipitators, baghouse or scrubber installation, coal washing plant and equipment) which have no other environmental impact outside of the existing facility site.

(11) Changes or additions to existing substations or switching stations or external changes to buildings or small structures requiring 0.4 hectare (0.99 acre) or more but no more than 2 hectares (4.94 acres) of new physically disturbed land or fenced property.

(12) Construction of diesel electric generating facilities of less than 3 megawatts (MW) (nameplate rating) at an existing generating site. All new associated facilities and electric power lines related to the generating proposal shall be covered in the BER.

(13) Modification of an existing hydroelectric project or dam that will have a total installed capacity of 1.5 MW (nameplate rating) or less and which will result in no change in the normal maximum surface area or normal maximum surface elevation of an existing impoundment. All new associated facilities and electric power lines related to the generating proposal shall be covered in the BER.

§ 1794.32 Proposals normally requiring an EIS.

(a) Actions that may significantly affect the quality of the human environment require preparation of an EIS. An EIS normally will be required in connection with Borrower proposals for construction and operation of the following types of facilities:

(1) New electric generating facilities of 40 MW or more (nameplate rating) other than diesel generators or combustion turbines. All new associated facilities and electric power lines related to the generating proposal shall be covered in the EIS.

(2) A new mining operation when the Borrower or Borrowers have effective control (*e.g.*, dedicated mine or purchase of a substantial portion of the mining equipment).

(b) Proposals of this type are subject to the requirements of §§ 1794.50 to 1794.55.

§1794.33 Proposals normally requiring an Environmental Assessment without scoping.

(a) REA will normally prepare an EA for all proposals which are neither categorical exclusions (§ 1794.31) nor are proposals normally requiring an EIS (§ 1794.32). For certain actions within this class, scoping and document procedures set forth in §§ 1794.50 to 1794.53 shall be followed (see § 1794.34). The following are examples of specific Borrower proposals which normally require an EA without scoping.

(1) Construction of combustion turbine and diesel generating facilities of less than 40 MW (nameplate rating), except for diesel generating facilities of less than 3 MW (nameplate rating) at an existing generating site. All new associated facilities and electric power lines related to the subject generating proposal shall be covered in the EA.

(2) Construction of any other type of new electric generating facilities of less than 5 MW (nameplate rating). All new associated facilities and electric power lines related to the subject

generating proposal shall be covered in the EA.

(3) Modification of an existing hydroelectric project or dam if:

(i) The project or dam will have a total installed capacity of more than 1.5 MW (nameplate rating); or

(ii) The modification will result in a change in the normal maximum surface area or normal maximum surface elevation of an existing impoundment.

All new associated facilities and electric power lines related to the generating proposal shall be covered in the EA.

(4) The expansion of a mining or drilling operation or a new drilling operation.

(5) Purchase of existing facilities or a portion thereof which are presently in violation of Federal, state or local environmental laws or regulations.

(6) The construction of electric power lines and related facilities designed for or capable of operation at a nominal voltage of 230 kV or more (low side) not covered by § 1794.31 (categorical exclusions) or § 1794.34 (normally requiring an EA with scoping).

(7) The construction of electric power lines and related facilities designed for or capable of operation at a nominal voltage of 69 kV or more (low side) but less than 230 kV (low side) where:

(i) More than 40 kilometers (24.85 miles) of power line are involved or

(ii) Substations and switching stations require new physical disturbance of fencing of more than 2 hectares (4.94 acres) at any single site or more than 4 hectares (9.88 acres) for all sites.

(8) Proposals designed to reduce the amount of pollutants released into the environment which may have other environmental impacts outside of the existing facility site.

(9) Issuance of REA regulations concerning environmental matters or substantial facility design, construction or maintenance practices.

(b) Proposals of this type are subject to the requirements of §§ 1794.60 to 1794.64.

§1794.34 Proposals normally requiring an Environmental Assessment with scoping.

(a) There are certain actions which require the use of a scoping procedure in the development of an EA. After the scoping process is completed and an acceptable Environmental Analysis has been submitted by the Borrower, REA will determine whether to prepare an EIS or finding of no significant impact (FONSI). The types of proposals falling within this category are:

(1) The construction of electric power lines and related facilities designed for or capable of operation at a nominal voltage of 230 kV or more (low side) where:

(i) More than 40 kilometers (24.85 miles) of power line are involved; or

(ii) Substations and switching stations require new physical disturbance or fencing involving a total of more than 2 hectares (4.94 acres) at any single site or more than 8 hectares (19.77 acres) for all sites.

(2) Construction of combustion turbines and diesel generators of 40 MW (nameplate rating) or more; and the construction of any other type of electric generating facilities of 5 or more MW but less than 40 MW (nameplate rating). All new associated facilities and electric power lines related to the subject generating project shall be covered in any EA or EIS prepared.

(b) Proposals of this type are subject to the requirements of §§ 1794.70 to 1794.73.

§ 1794.35 Work plan proposals.

Borrowers frequently request financing assistance for a number of relatively minor unrelated projects all of which are described in a single "work plan." In determining the proper environmental classification of construction projects contained in a work plan, REA will consider as a single proposal all related construction included in the work plan and any additional construction related thereto which, although not included in the work plan, is reasonably foreseeable.

Subpart E—Procedure for Categorical Exclusions

§ 1794.40 General.

The following procedure, which applies to action classified as categorical exclusions in § 1794.31 hereof, provides REA with information necessary to determine if the proposed action meets the criteria for a categorical exclusion. Where, because of extraordinary circumstances, an action may have a significant effect on the quality of the human environment, REA may require additional environmental documentation.

§ 1794.41 Proposals with no BER.

Normally the Borrower shall not submit a BER for proposals included in § 1794.31(b). However, if so noted in § 1794.31(b) the Borrower shall submit a description of the proposal. Such description shall include, where applicable, a plan for erosion and sedimentation control. No public notice is required unless the proposal is located in and may affect wetlands or floodplains.

§ 1794.42 BER proposals.

For proposals included in § 1794.31(c) the Borrower normally shall submit a BER or its equivalent which will assist REA in identifying extraordinary circumstances in which a normally excluded action may have a significant environmental effect. No public notice is required unless the proposal is located in and may affect wetlands or floodplains. REA shall not permit construction or other activities which would have an environmental effect until it has received, reviewed and accepted an adequate BER.

Subpart F—Procedure for Proposals Normally Requiring an EIS

§ 1794.50 Normal sequence.

Appendix A to Part 1794 (Procedure for Proposals which Normally Require an EIS) describes the normal sequence of EIS preparation to be employed by REA. For proposals normally requiring an EA with scoping (see § 1794.34), the NEPA process shall proceed in the same manner as for proposals normally requiring an EIS through the point at which the Environmental Analysis is submitted (see § 1794.53). After the Environmental Analysis has been submitted, REA shall make a judgment to prepare either an EIS or a finding of no significant impact (FONSI).

§ 1794.51 Preparation for scoping.

(a) REA has developed a general approach to the NEPA process, including scoping, for proposals normally requiring an EIS (§ 1794.32) and for proposals normally requiring an EA with scoping (§ 1794.34). Scoping procedures are designed to determine the scope of issues to be addressed and to identify significant issues related to a proposed action. REA may require scoping procedures to be followed for other proposals where appropriate to achieve the purposes of NEPA.

(b) As soon as practicable, REA will publish its notice of intent to prepare an EIS (see 40 CFR 1508.22). The Borrower shall publish, in a timely manner, a notice similar to REA's notice. If the proposal is one which normally requires an EA with scoping (§ 1794.34), the notice shall indicate that: (1) REA may prepare an EA before or without necessarily preparing an EIS, and (2) the decision whether or not to prepare an EIS will be based on information received from the Borrower, Federal, state and local agencies, organizations and the general public during the scoping process, preparation of the Environmental Analysis, and the review period for a finding of no significant impact (if originally issued).

(c) As part of the early project planning the Borrower should consult with expert and interested Federal, state and local agencies to inform them of the proposed project, and to identify permits and approvals which must be obtained and administrative procedures which must be followed.

(d) Before any scoping meetings are held REA shall require the Borrower to submit two environmental documents:

(1) Alternative evaluation.

(2) Siting study (for electric generation or new mines) or Macro-Corridor study (for electric transmission).

(e) The Borrower is encouraged to hold additional public information meetings in the general location of the proposed project and any reasonable alternatives when such borrower meetings will make the scoping process more meaningful. A written summary of the comments made at such meetings should be submitted to REA as soon as practicable after the meetings.

§ 1794.52 Scoping meeting.

(a) Both REA and the Borrower shall publish a notice of the public scoping meeting which shall:

(1) Provide a brief description of the nature and location of the Borrower's recommended alternative (if any) and reasonable alternatives;

(2) State the intent to hold public scoping meetings, giving the date, time, location and purpose of these meetings;

(3) State where copies of the scoping documents are available for public review, which shall include the Borrower's headquarters, REA offices in Washington, and other locations as determined by REA;

(4) Provide the name and address of the person to whom questions and comments should be sent;

(5) Set forth a thirty (30) day period after the scoping meeting(s) to enter comments into the meeting record.

(b) The REA notice will be published at least thirty (30) days prior to the meeting(s). The Borrower's notice shall be published at least ten (10) days, but not more than thirty (30) days prior to the meeting(s).

(c) The scoping meeting(s) will normally be held in the vicinity of the Borrower's recommended alternative and, where appropriate, the reasonable alternatives or such other places as REA determines will best afford an opportunity for public involvement. Any person, organization or government body desiring to make a statement at the meeting may make such statement in writing or orally. A record will be made of the scoping meeting.

(d) As soon as practicable after the scoping meetings(s), REA, as lead agency, shall determine the significant issues to be analyzed in depth and identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review. REA will develop a proposed scope for further environmental study and review. A copy of this proposed scope will be sent to cooperating agencies and the Borrower, which shall be given thirty (30) days to comment on its adequacy and emphasis. After expiration of the thirty (30) day period REA will provide formal guidance to the Borrower concerning the scope of environmental study to be performed and information to be gathered.

§ 1794.53 Borrower's environmental analysis.

(a) After scoping procedures have been completed, REA shall require the Borrower to develop and submit an Environmental Analysis satisfactory in form and substance to REA. The Environmental Analysis will be prepared under the guidance of the REA staff and all information set forth therein shall be subject to independent verification by REA.

(b) The Environmental Analysis will normally provide a basis for preparation of REA's EA or EIS and may be made an appendix to the REA document. After REA has reviewed and found an Environmental Analysis to be satisfactory, the Borrower will be required to provide REA with a sufficient number of copies of the Environmental Analysis to satisfy REA's distribution plan.

(c) The Environmental Analysis shall include a summary of the construction and operation monitoring and mitigation measures for the proposed project. This summary shall appear in the draft and final EIS. These measures may be revised as appropriate in response to comments on the draft and final EIS and other information. These measures also shall be incorporated by summary or reference into REA's Record of Decision.

§ 1794.54 EIS.

(a) After a draft or final EIS has been prepared, REA and the Borrower shall issue a notice of availability for the document. The notice shall:

(1) Provide a brief description of the nature and location of the preferred and reasonable alternatives;

(2) State the availability of a draft or final EIS for public review;

(3) State how copies of the EIS can be obtained and where copies are available for public review which shall include the Borrower's headquarters, REA offices in Washington, DC, selected libraries in the area of the preferred and reasonable alternatives and such other reasonable places as REA shall select;

(4) Provide the name and address of the person to whom questions and comments should be sent;

(5) Set forth the time period for review and comment. This time period normally shall be forty-five (45) days for a draft EIS and thirty (30) days for a final EIS, measured from the date that the U.S. Environmental Protection Agency's notice or the Borrower's notices are first published, whichever is later.

REA and the Borrower notices for the final EIS shall also request persons, organizations or governmental bodies which wish to be notified when the Record of Decision is available to inform REA of such interest.

(b) In addition to circulation required by 40 CFR 1502.19, draft and final EIS's (or summaries thereof, at REA's discretion) shall be circulated to the appropriate state, regional, and metropolitan clearinghouses.

(c) Where a final EIS does not require that substantial changes be made in the draft EIS, REA may document required changes through errata sheets, insertion pages and revised sections to be incorporated into the draft EIS. In such cases, REA will circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information, as its final EIS. REA will not circulate the draft EIS again, although the draft EIS will be provided if requested within thirty (30) days of publication of notice of availability of the final EIS.

(d) In individual situations, upon mutual agreement between REA and the Borrower, the EIS may be prepared by an independent contractor. If REA acts as lead agency, the contractor will be chosen by REA. Under this procedure, the Borrower normally will not be required to submit an Environmental Analysis.

[49 FR 9550, Mar. 13, 1984; 49 FR 10083, Mar. 19, 1984]

§ 1794.55 Timing of agency action.

(a) Where an REA action requires an EIS, REA shall prepare a Record of Decision. The Record of Decision will not be prepared, and REA will not take any action or execute commitments before expiration of the thirty (30) day period starting with either EPA's notice in the FEDERAL REGISTER that the final EIS is available or the Borrower's notices of availability, whichever is later.

(b) For budgetary purposes some financing assistance may be approved conditionally with a stipulation that no funds will be advanced until a Record of Decision has been prepared.

Subpart G—Procedure for Environmental Assessment Proposals Without Scoping

§ 1794.60 General.

The following procedure applies to all actions classified as Environmental Assessment projects in § 1794.33 hereof. Where appropriate to carry out the purposes of NEPA, REA may require, on a case by case basis, that additional action be taken in connection with preparation of an EA. If at any point in the preparation of an EA, REA determines that the action will have a significant impact on the environment, the preparation of an EIS will be required and the procedures applicable thereto will be followed.

§ 1794.61 Document requirements.

For those proposals covered by § 1794.33, the Borrower shall submit a BER or its equivalent. The BER may serve as REA's EA if REA makes an independent evaluation of the environmental issues and concurs in the BER's scope and content. The BER also may be made an Appendix to REA's EA to provide information on the proposal and reduce unnecessary paperwork.

§ 1794.62 Notice of availability.

The Borrower shall publish a public notice of availability of the BER.

(a) The Borrower's notice shall:

(1) Provide a brief description of the nature and location of its recommended and reasonable alternatives;

(2) State the availability of the BER for public review;

(3) State how copies of the BER can be obtained and where copies are available for public review, which shall include the Borrower's headquarters, REA offices in Washington, D.C., and other locations as determined by REA;

(4) Provide the name and address of the person to whom questions and comments should be sent;

(5) Set forth a thirty (30) day time period for review and comment.

(b) The Borrower's notice shall be published after REA has determined that the BER provides a satisfactory basis for public comment.

[49 FR 9550, Mar. 13, 1984; 49 FR 10083, Mar. 19, 1984]

§ 1794.63 FONSI and notice requirements.

(a) If REA, after reviewing the EA, finds that the proposal will not have a significant effect on the human environment, REA shall prepare a FONSI. After the FONSI has been made, REA shall publish a notice of availability of the EA and FONSI. The Borrower shall have published, in a timely manner, a similar notice.

(b) Both the REA and Borrower's notice shall:

(1) Provide a brief description of the nature and location of the preferred and reasonable alternatives;

(2) State that an EA and FONSI have been prepared;

(3) State how copies of the EA and FONSI can be obtained, and where copies are available for public review which shall include the Borrower's headquarters, REA ofices in Washington, and other locations as determined by REA;

(4) Provide the name and address of the person to whom questions and comments should be sent.

(c) REA shall not permit construction or other activities which would have an environmental effect until it has received, reviewed and accepted an adequate BER and the public notice requirements in paragraphs (a) and (b) of this section have been met.

§ 1794.64 Timing of agency action.

REA may take its final action on proposals requiring an EA without scoping (§ 1794.33) at any time after publication of the REA and Borrower notices that a FONSI has been made.

Subpart H—Procedure for Environmental Assessment Proposals With Scoping

§ 1794.70 General.

For those proposals covered by § 1794.34, REA and the Borrower shall follow the procedures for scoping and the requirements for notices and documents set forth in §§ 1794.50 through 1794.53 of Subpart F, "Procedure for Proposals Normally Requiring an EIS."

§ 1794.71 REA determination.

After the scoping process and receipt of an acceptable Environmental Analysis, REA shall make a judgment as to whether or not REA's action will be a major Federal action significantly affecting the quality of the human environment. If a significant effect is evident, REA shall continue with the procedures in §§ 1794.54 through 1794.55 of Subpart F, "Procedure for Proposals Normally Requiring an EIS." If a significant effect is not evident, REA shall develop and prepare an EA and FONSI.

§ 1794.72 Notice requirements for a FONSI determination.

If REA prepares a FONSI for a proposal covered by § 1794.34, REA and, in a timely manner, the Borrower shall publish notices of availability of the EA and FONSI. The EA and FONSI shall be made available for public review and comment for at least thirty (30) days, and the REA and Borrower notices shall solicit public comments. Additional REA and Borrower notice requirements are included in § 1794.63.

§ 1794.73 Timing of agency action for FONSI determination.

REA may take its final action at any time after expiration of the thirty (30) day period measured from the date of publication of the REA notice in the FEDERAL REGISTER. Normally REA shall wait thirty (30) days after publication of the Borrower's notice before taking a final action.

Subpart I—Adoption of Environmental Documents

§ 1794.80 General.

Where Borrowers participate in projects for which other agencies have already prepared an EIS or EA, REA will adopt the existing EIS or EA consistent with the provisions of 40 CFR 1506.3.

§ 1794.81 Adoption as a final EIS.

(a) If REA acted as a cooperating agency, the lead agency's EIS may be adopted as a final EIS without recirculation if REA has reviewed the comments received on the final EIS and concluded that comments and suggestions have been adequately considered.

(b) If REA was not a cooperating agency but determines that another Federal agency's EIS is adequate it will adopt the EIS as its final EIS.

(1) REA and the Borrower shall publish a notice stating REA's adoption of the EIS and independent determination of its adequacy. The notices are governed by §§1794.12 (general) and 1794.54(a) (EIS).

(2) If the adopted EIS is generally available, REA will circulate its written finding that the adopted EIS meets the standards for an adequate EIS. The adopted EIS shall be made available to interested parties upon request.

(3) If the adopted EIS is not generally available, REA will circulated its written finding that the adopted statement is an adequate EIS, along with either the adopted EIS or a summary thereof in accordance with 40 CFR 1502.19. The adopted EIS shall be circulated in the same manner as a final EIS (see § 1794.54(b)).

§ 1794.82 Adoption as a draft EIS.

Where REA determines that an existing Federal EIS requires additional information to meet the standards for an adequate statement for a proposed REA action, REA may adopt all or a portion of the EIS as a part of its draft EIS. The circulation provisions of § 1794.54(b) for draft and final EIS's apply. The general notice provisions (§ 1794.12) and notice provisions for EIS's (§ 1794.54(a)) apply.

§ 1794.83 Adoption of an EA.

REA may adopt a Federal EIS or EA or a portion thereof as its EA. REA shall make the EA available and assure that notice is provided in the same manner as if REA had prepared the EA.

§ 1794.84 Adoption of environmental materials.

REA may adopt environmental documents or portions thereof prepared by Federal, state or local agencies or other parties independently of the requirements of NEPA. REA may adopt such materials into its environmental documents. REA will circulate the adopted document as a part of its environmental assessment or draft and final EIS in the same manner as if prepared by REA.

§ 1794.85 Timing of agency action.

Where REA has adopted another agency's environmental documents, the timing of the REA action shall be subject to the same requirements as if REA had prepared the required EA or EIS.

Subpart J—Supplemental EIS

§ 1794.90 Circulation and notices.

(a) A supplement to a draft or final EIS shall be prepared, circulated and given notice by REA and the Borrower in the same manner (exclusive of scoping) as a draft and then final EIS (see § 1794.54).

(b) Normally REA and the Borrower shall have published notices of intent to prepare a supplement to a final EIS in those cases where a Record of Decision has already been issued.

(c) REA, at its discretion, may issue an information supplement to a final EIS where REA determines that the purposes of NEPA are furthered by doing so even though such supplement is not required by 40 CFR 1502.9(c)(1). REA and the Borrower shall publish a notice of availability. The notice requirements shall be the same as for a final EIS indicated in § 1794.54(a). The information supplement shall be circulated in the same manner as a final EIS (see § 1794.54(b)). REA shall take no final action on any proposed modification discussed in the information supplement until thirty (30) days after the REA notice of availability is published or thirty (30) days after the Borrower's notice is published, whichever occurs later.

§ 1794.91 Timing of agency action.

Timing of REA's action shall be subject to the same requirements as apply to a typical EIS.

APPENDIX A—PROCEDURE FOR PROPOSALS WHICH NORMALLY REQUIRE AN EIS

Appendix A

Procedure for Proposals Which Normally Require an EIS

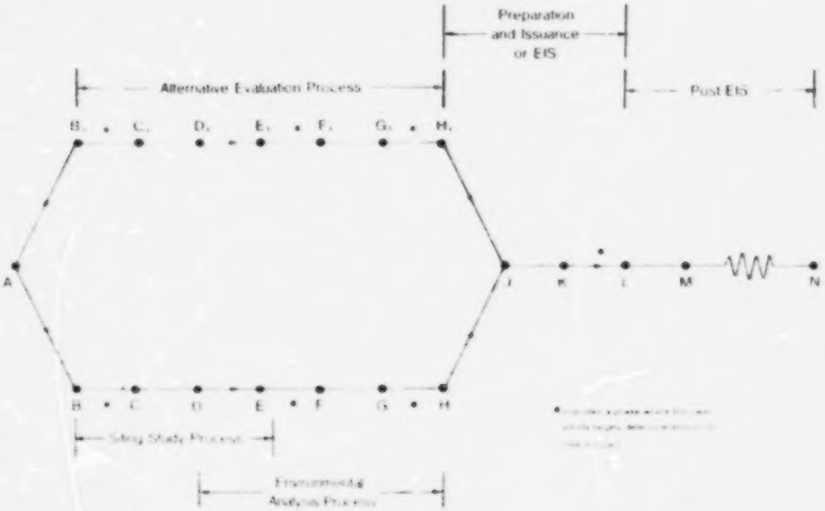
Preparation and Issuance or EIS
Alternative Evaluation Process
Post EIS
B_1
C_1
D_1
E_1
F_1
G_1
H_1
A
I
K
L
M
N
B
C
D
E
F
G
H
Siting Study Process
Environmental Analysis Process

Diagram Legend

- ► On-going activity in the EIS process
- B, C, D, Discrete events in the Siting Study and Environmental Analysis path
- B_1, C_1, Discrete events in the Alternative Evaluation path

As the diagram illustrates, there will be two separate but interrelated study processes leading to the preparation of the EIS. One process B_1 through H_1 will examine alternatives to building a generating (or transmission or new mining) facility. The other process, B through H will examine a range of potentially acceptable sites for a generating (or transmission or new mining) facility.

In order to facilitate long-range planning and reduce delays, a Borrower may undertake preliminary evaluations of alternative means of providing power and begin the study of a range of potentially acceptable sites for a generation (or transmission or new mining) facility before demonstrating a need for the proposal. However, the obligation to show a need for the proposal will still remain before REA financing assistance can be obtained.

Equal spacing between points on the diagram is not meant to suggest equal time intervals. Where two letters are the same (except for subscripts), generally the two indicated events should occur within the same time frame. For BD and B_1D_1, this is only true where the Borrower initiates site selection at a time when there is a specific need to be filled. For major transmission projects, events occurring with reference to the Macro-Corridor Study are analogous to the generation and mining Siting Study procedures.

The flow diagram is intended to indicate the normal sequence of events although some variance may be acceptable in individual cases if good cause is demonstrated. However, in all instances REA shall assure that the requirements of the NEPA and CEQ regulations are fulfilled.

Discrete Events

A: The Borrower presents to REA the underlying needs which form the basis of its proposal. REA undertakes for electric generation proposals, when necessary, the preparation or update of the power requirements study (PRS) utilizing REA procedures. For electric generation and transmission and mining proposals, the need for the proposal shall be presented in the draft and final EIS's (or EA, as applicable).

B and B_1: The Borrower consults with REA on the procedures and general parameters for the Siting Study and on potential alternative ways to meet the need, including guidance on preparing the Alternative Evaluation. Consultation may be initiated even if a specific need has not been identified.

BC. Work is performed on the Siting Study by the Borrower and/or consultant. This includes "macroanalysis" in which general criteria, literature search and consultation are used to identify a reasonable range of potentially acceptable sites.

Borrower/consultant contact Soil Conservation Service (SCS), U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), U.S. Army Corps of Engineers (COE), Federal land use agencies and state agencies for early guidance and input.

As soon as practicable during this period, REA publishes its "Notice of Intent" in the FEDERAL REGISTER and the Borrower publishes similar information in local newspapers of general circulation. (See § 1794.51(b)).

B_1C_1: Borrower does research and consultation, contacts other utilities, etc., to determine whether there are reasonable alternatives to a new generating (or transmission or mining facility). The Alternative Evaluation should include discussion, as appropriate, of joint projects, alternate fuels, alternate energy sources, conservation, etc. Alternatives eliminated from detailed study should be identified and reasons given for the elimination. The Borrower should also indicate which alternatives are reasonably available to it if its recommended alternative is not approved.

C and C_1: Borrower submits draft of Siting Study and Alternative Evaluation to REA for review. REA reviews each draft for major flaws. If such flaws are not present, REA submits both the draft Siting Study and Alternative Evaluation to potentially involved Federal and state agencies (including, but not limited to, all agencies invited to the field investigation) for review and comment.

D and D_1: REA invites other Federal and state agencies to make a field investigation of potentially acceptable siting areas discussed in the draft Siting Study and critique the study methodology, and point out potential problems with these alternative siting areas. The Borrower at this time presents site and nonsite specific alternatives included in the Siting Study and Alternative Evaluation to these agencies for their comments. Participating agencies may critique alternative means of meeting the need and point out potential problems with alternative siting areas. The agencies set up a strategy for conducting the scoping process and tentatively identify the lead and cooperating agencies for the EIS.

DE: Federal agencies are given the opportunity to comment on the potentially acceptable alternatives to point out fatal flaws. During this stage the Borrower may secure land, water or other critical factors for potentially acceptable sites by option or other means (subject to the limitations in § 1794.21). If REA's notice of intent and the Borrower's notice did not give the date and time of the scoping meeting, scoping meeting notices are published now.

E and E_1: Scoping meeting(s) is held to receive input from the public, interested parties, and Federal, state and local officials and agencies. Among the topics open to discussion are reasonable alternatives to meet the need, potentially acceptable sites, participation projects or conservation, significant issues to be addressed in the EIS and the need for the project.

EF: Borrower submits revised Siting Study (or addenda if appropriate) to REA for review after revising it to reflect input from scoping meeting(s). REA consults with cooperating agencies on the scope of the EIS and gives the Borrower guidance on scope of the Environmental Analysis. Borrower prepares the draft Environmental Analysis which includes a fatal flaw study of potentially acceptable sites and a "microanalysis" in which detailed field work is conducted on the Borrower's recommended site(s). The Borrower continues consultation with REA and other interested Federal, state, and local agencies, and the public, and reflects their comments in the Environmental Analysis.

D.F.: Borrower updates and expands, as necessary, the Alternative Evaluation on the basis of comments received from Federal, State and local officials and agencies, input from participants at the scoping meeting(s), the general public and new developments (e.g., negotiations with other electric power utilities). REA provides guidance to the Borrower during this period based on cooperating agency and public input.

F and F.: The Borrower submits draft Environmental Anaylysis to REA for review and comment. If the draft Environmental Analysis has no readily apparent critical flaws, REA distributes copies of the Environmental Analysis to cooperating agencies for review. Borrower submits Alternative Evaluation, which has been updated after the scoping meeting, and also includes new alternatives, if any, which have developed. REA submits updated Alternative Evaluation to requesting cooperating agencies. The Environmental Analysis may incorporate the Alternative Evaluation leading to a single review document.

FG and F.G.: REA and cooperating agencies independently evaluate, for accuracy, scope and content, the information submitted to them. REA collates reponses and reconciles them with the Borrower. REA may begin writing the draft EIS at this point.

H and H.: REA Borrower submits, as appropriate, a final revised Environmental Analysis and Alternative Evaluation to REA.

HJ and H.J: REA independently evaluates the revised documents and verifies the information therein before use in the EIS. During this time, REA prepares the draft EIS, utilizing the borrower-supplied data, interagency expertise, and other information.

J: REA issues draft EIS for public review and comment publishing notice of availability in the FEDERAL REGISTER.

K: Public comment period ends on draft EIS. This date may be extended in certain instances.

KL: REA (and cooperating agencies, as appropriate) review comments received on draft EIS and responds, by modifying alternatives, developing alternatives not previously given sufficient consideration, supplementing, improving or modifying the analyses, etc. A final EIS or supplemental draft EIS is prepared, as appropriate, with cooperating agencies' assistance.

M: Record of decision is issued. REA will take no final action on any loan guarantee, etc., sooner than 30 days after issuance of the final Federal EIS.

MN: Implementation of mitigation measures is checked, as necessary, by REA and other Federal, state, and local agencies during construction and operation of the project.

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

EDITORIAL NOTE: Nomenclature changes to Chapter XVIII appear at 39 FR 14499, Apr. 24, 1974.

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EDITORIAL NOTE: Chapter XVIII-Farmers Home Administration is continued in the volumes containing 7 CFR Parts 1900 to 1944 and 7 CFR Part 1945 to end.

SUBCHAPTER A—GENERAL REGULATIONS

PART 1804—PLANNING AND PERFORMING DEVELOPMENT WORK

Subparts A-C—[Reserved]

Subpart D—Planning and Performing Site Development Work

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Subparts A-C—[Reserved]

Subpart D—Planning and Performing Site Development Work

AUTHORITY: Sec. 510, 63 Stat. 437, (42 U.S.C. 1480); Orders of Acting Secretary of Agriculture, 36 FR 21529, 37 FR 22008; Order of Assistant Secretary of Agriculture for Rural Development and Conservation, 36 FR 21529, unless otherwise noted.

SOURCE: 38 FR 4500, Feb. 15, 1973, unless otherwise noted.

§ 1804.61 General.

This subpart prescribes the policies, methods, and responsibilities with respect to planning and performing site development work in connection with all types of loans and grants authorized by Title V of the Housing Act of 1949.

§ 1804.62 Definitions.

As used in this subpart:

(a) The term, "new subdivisions" means any division of "raw" land or property in which five or more lots or building sites are created. This applies to original subdividing as well as resubdivision of property. This also applies to expansion of existing subdivisions.

(b) The term, "existing unimproved subdivisions" means any series of contiguous recorded lots or building sites which do not have the streets developed and/or all or part of the public utilities installed.

(c) The term, "acceptable existing subdivisions" means any series of contiguous lots or building sites which have been developed to comply with all local requirements and with the existing subdivision standards of this subpart.

(d) The term, "scattered sites" means lots or building sites which have established boundaries, but because of location or number, are considered individually rather than as subdivisions. They may be skipped lots in old subdivisions or scattered in open country.

(e) The term, "construction" or "development" means the act of building structures and installing site improvements.

(1) The term, "building development" means the construction of all roofed structures for shelter.

(2) The term, "land development" means all land clearing, rough and finish grading, drainage facilities, retaining walls, water supply facilities, waste disposal facilities, streets, curbs, and gutters, sidewalks, entrancewalks, driveways, parking areas, landscaping and other related structures.

(f) The term, "county supervisor" means the Farmers Home Administration (FmHA) county supervisor. It also includes the assistant county supervisor when, in the opinion of the district supervisor and the county supervisor, he has sufficient training and experience to properly perform the required actions. Redelegation shall be in writing in accordance with applicable regulations.

(g) The term, "builder-developer" means any individual, group or corporation which has as its intent to create a site or group of homesites and may or may not have intent to construct the dwellings on the sites created.

§ 1804.63 Purpose and general policy.

(a) The purpose of this subpart is to provide policies and guidelines for the orderly development of building sites and related facilities in rural areas. These regulations are designed to assure:

(1) The establishment of standards of subdivision design which will encourage and lead to the development of economically stable communities, and the creation of attractive, healthful, and permanent living environments.

(2) Installation by the land developer of facilities and improvements meeting the standards prescribed by this subpart.

(3) The efficient and adequate supply of utilities and services at reasonable costs.

(4) The prevention of traffic hazards and the establishment of safe and convenient means for the circulation of traffic, both vehicular and pedestrian.

(b) The proposed development must comply with all local regulations, ordinances, and codes.

(1) All proposed development planning should conform where applicable with general planning policies and regulations of the local, regional, or State planning agency having jurisdiction.

(2) In addition to, or in the absence of, local regulations the proposed subdivision planning and construction will meet the requirements of this subpart. Copies of a booklet entitled, "Site Development Design Standards," are available for review by writing to: Deputy Administrator Comptroller, Farmers Home Administration, U.S. Department of Agriculture, South Building, Washington, DC 20250.

(c) The energy required to develop the site and to provide support services and to be used for transportation by residents after the site is occupied must be a factor used to select the site and final project design. This factor should be used primarily to assist in the site selection process within a given community, and not necessarily as a basis for moving projects to larger communities.

(d) If the Department of Housing and Urban Development and/or the Veterans Administration is reported to be insuring or guaranteeing mortgages in a subdivision, evidence of their acceptance of the subdivision should be obtained before FmHA loans are made.

[38 FR 4500, Feb. 15, 1973, as amended at 45 FR 57974, Aug. 29, 1980]

§ 1804.64 Planning development.

For new subdivision development, expansion of existing subdivisions and existing unimproved subdivisions, all planning will be the responsibility of the builder-developer.

(a) *FmHA advice and assistance.* On subdivisions which will have 5 or more building sites in the foreseeable future, builder-developers shall be encouraged to seek the advice and assistance of the FmHA before significant expenditures are made. When a County Supervisor receives an inquiry about housing financing in a proposed, new or existing subdivision of 5 or more sites, he will:

(1) Discuss with the builder-developers the requirements of the FmHA with respect to compliance with local, regional, and State regulations and land planning policies as well as the FmHA requirements with respect to nondiscrimination, land development, good house planning, and construction practices.

(2) Explain to the builder-developer the need for completion of Form FmHA 424-20, "Request for Subdivision Feasibility Analysis," to obtain FmHA assistance. The county supervisor will explain and provide the form, the required Form FmHA 400-4, "Nondiscrimination Agreement," and Form FmHA 400-1, "Equal Opportunity Agreement."

(3) Advise the builder-developer regarding publications, planning aids, engineering data, soils data, and other technical advice and assistance available through local, State, and Federal agencies, planning commissions and private institutions and organizations.

(4) Make this subpart and any guidelines available to the builder-developer for viewing. County supervisors may requisition additional copies of these guidelines from the Finance Office to be used as handouts to assist the builder-developer.

(b) *Technical services.* Residential areas must be planned according to the purposes and general policies stated in § 1804.63; therefore, professional planning of residential neighborhoods is required. Poorly drawn, incomplete, or uncoordinated plans and specifications are not acceptable.

(1) The builder-developer proposing a new subdivision which will have 10 or more dwelling sites will secure the services of a site planner, architect, landscape architect, or engineer, registered or otherwise certified as qualified in the State in which the subdivision is to be constructed, to provide complete planning, drawings, specifications, and supervision on land, street, utility and grading development.

(2) Complete technical services will be obtained and paid for by the builder-developer with his own funds.

(3) At completion of construction (or when construction will be accomplished in phases, at the end of each phase), the person who is qualified and registered or certified in the state in which the subdivision is to be constructed and is providing supervisory services during the period of work shall notify the FmHA County Office in writing that all work has been completed in substantial conformance with the approved plans and specifications.

(c) *Plans, specifications and other documentations.* Required plans, specifications, and other documents are listed in § 1804.74.

(1) Section 1804.74 shall serve as a guide for the documents a builder-developer should prepare in submitting a proposal for subdivision development in which 10 or more sites will be created in the foreseeable future, and provide additional information regarding documents required in Form FmHA 424-20.

(2) Section 1804.74 shall also be used by FmHA county supervisors and State directors in checking submissions for subdivision feasibility analysis.

(3) Other documents listed as additional supplemental information may be included in the proposals to illustrate and further clarify difficult areas of development and to help reduce possible misunderstandings.

[38 FR 4500, Feb. 15, 1973, as amended at 39 FR 28871, Aug. 12, 1974]

§ 1804.65 Locations.

New and existing subdivisions to be eligible for FmHA participation must be located in a rural area as defined in rural housing regulations, and comply with the following:

(a) Shall be in compliance with the general planning policy of the applicable planning agency having jurisdiction.

(b) Shall be so located as to provide desirable permanent living conditions for the residents and be convenient to services such as shopping, schools, churches, employment opportunities, recreation, and communications.

(c) Wherever practicable, be a part of a rural place, village or town and take advantage of established facilities such as central water and sewerage systems, solid waste disposal, public and private transportation and police and fire protection.

(d) Be located and planned so as to insure long-term market demand and acceptability.

(e) No structure shall be located within an area designated as a 100-year frequency flood plain. Delineation of these areas can be obtained from the U.S. Army Corps of Engineers, the Soil Conservation Service (SCS), or the U.S. Geological Survey. Where the developer proposes to provide a levee or raise the floor elevation above the flood level, an engineering report shall accompany the subdivision application.

(f) The type of houses and the facilities planned for scattered sites shall comply with the local regulations, codes and ordinances and with the appropriate requirements of this subpart.

§ 1804.66 Water and waste disposal systems.

(a) For new subdivisions and expanded existing subdivisions:

(1) Where environmentally and economically feasible, the subdivision shall have central water and waste disposal systems. The systems should be

publicly owned and operated, although privately owned and operated systems may be accepted if they comply with the requirements of paragraph (a)(4) of this section.

(2) All central systems, public, community or private, shall meet the design requirements of the State Department of Health or other comparable reviewing and regulatory authority. The approval shall be in writing.

(3) Subdivisions which are not presently served by a public system but which are scheduled for tie-in to the public system in a few years should have all lines installed during the initial development. Such subdivisions must have an approved interim community system installed capable of satisfactory service until the scheduled tie-in occurs.

(4) In addition to written assurance of compliance with State and local requirements, there must be adequate assurance of continuous service at reasonable rates for central water and waste disposal systems. Public ownership is preferred whenever possible. In cases where interim facilities are installed, pending extension or construction of permanent public services, the developer should assume responsibility for the operation of the interim facility or establish an acceptable entity for its operation. If a system is not or will not be publicly owned and operated, it must comply with one of the following:

(i) Be an organization that meets the ownership and operation requirements for water or waste disposal system financing of the FmHA, or be dedicated to such an organization.

(ii) Be an organization or individual that meets other acceptable methods of ownership and operation as outlined in HUD–FmHA Booklet No. 1300, "Ownership and Organization of Central Water and Sewerage Systems." In the case of Third Party Beneficiary Contracts, the FmHA can become the "Representative" and become a party to the contract. The contracts should contain a clause naming "The United States of America, acting through the Farmers Home Administration," as "Representative." The advice and assistance of the regional attorney should be obtained in making the needed changes in the "Third Party Beneficiary Contract" form.

(iii) Be adequately controlled as to rates and service by a public body (unit of government or public service commission). In some States, this control may not be adequate to protect the borrower's or the FmHA's interest, but in others it will be adequate because both rates and facilities are subject to adequate control. In some cases, the control may be provided by means of a franchise.

(5) Where central systems are not available or economically feasible to construct in subdivisions having not more than 25 building sites, the State director may permit individual systems.

(i) Any request to the State director for such an exception submitted by the county supervisor should contain statements from local health and civil authorities indicating specifically why connection to or installation of a central system is not feasible at this location.

(ii) The State office technical staff shall make a thorough study of any request of authority to use individual systems to determine whether central systems might be feasible considering the market for homes over a 2- or 3-year period at the proposed location. Computations should indicate allowable value for property served by central systems versus the cost of individual systems. More lots at a higher value will accrue when central systems are provided. Where comparable costs are found, central systems should be required allowing appropriate value for lots so served.

(iii) If individual systems must be utilized, the information prepared by the local, county, or State health authority and the county supervisor, with written opinions of the technical staff of the State office will indicate whether individual systems are feasible on all the building sites in question. Supporting factual data should include evidence that clearly shows that individual systems will perform satisfactorily for a reasonable period of time with reasonable maintenance cost. Reasonable time and reasonable cost can be equated with the charges for a central sewerage system if one were available. An individual sewage disposal system that requires cleaning or repairs every few months cannot be considered as giving trouble-free service or an individual water system that requires extensive treatment equipment to provide an acceptable safe potable water supply cannot be considered as within reasonable cost. All documentation, calculations, and written opinions substantiating the decision shall remain in the county office file. Supporting factual data shall cover all of the following points:

(A) *Water systems.* (*1*) Documentation of how individual water supplies can be developed in satisfactory quantity at a reasonable cost. Explain how an acceptable water quality will be achieved at a reasonable cost using the 1962 Public Health Service Drinking Water Standards Publication No. 956 as a guide if the State health authority has no standard of its own for water quality. The PHS Publication No. 956 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(*2*) *Report on water tests.* Individual water systems shall be tested for quantity; bacteriological quality; and in certain areas where problems may be anticipated, tested for chemical quality. This last test may be a partial chemical test limited to analysis for the defects common to the area such as iron and manganese, hardness, nitrates, pH (concentration of hydrogen ions), turbidity, color, or other undesirable elements.

(*3*) A polluted or contaminated source of supply is unacceptable. If the supply is found to be unacceptable, the most acceptable and economical means will be used to make the correction and the deficiency shall be corrected before the final inspection and written evidence must be furnished showing acceptance by the State, county, or local health authority having jurisdiction.

(*4*) In areas where difficulty may be anticipated and in order to develop an acceptable supply, contingency funds shall be included in the original loan estimate and returned as a refund subsequently if not required. Such contingency funds may be necessary for such items as drilling to a greater depth than is common to other wells in the area or for providing additional storage to supplement a limited source supply of water or to provide for treatment to soften or remove iron or correct some other quality defect.

(B) *Sewerage systems.* (*1*) Provide assurance of nonpollution of ground water supply. State health authorities or their locally approved agents shall be consulted to insure that installation of septic tank systems will not pollute ground water sources or create other health hazards. In some cases, a department other than State health may provide this data.

(*2*) Description of exploratory pit observations.

(*3*) Determination of soil types and description. The assistance of the SCS should be obtained for soil type determination and a copy of their recommendations included in the documentation.

(*4*) Describe ground water elevations showing seasonal variations.

(*5*) Include records of percolation rates. U.S. Department of Health, Education, and Welfare—Public Health Administration "Manual of Septic Tank Practice" criteria may be used as a guide in obtaining accurate percolation tests.

(*6*) Confirmation of space allowances. An accurate drawing to indicate that lot sizes will insure that adequate space is available for the satisfactory operation of individual water and/or sewage disposal systems, likewise documented assurance of compliance with all local requirements. Such determination will also be subjected to FmHA State office review and acceptance.

(6) In subdivisions of more than 25 building sites where the State director determines that individual water systems and/or sewage disposal systems are the only feasible solution, National Office approval is required. A request for authority for approval shall be accompanied by full documentation as listed in paragraphs (a)(5)(i), (ii), and (iii) of this section with written recommendation of the State director and his technical staff.

(b) For existing subdivisions. (1) Existing central water and sewage systems must comply with all State and local regulations and also must meet the requirements of paragraph (a) of this section.

(2) Central systems operating in a subdivision must be proved adequate for the additional load imposed by the proposed development.

(3) If individual water and/or sewage disposal systems have been in use and it is not feasible to convert to central systems, determine the following and document the file accordingly:

(i) State and local regulations will not force the community to install central systems within a year or two.

(ii) Verify that the existing individual systems in the immediate area are operable and giving satisfactory service.

(iii) The lots in question comply with all of the requirements of paragraph(a)(5)(iii), of this section.

(c) Scattered sites which are not in established residential neighborhoods and which are not part of a proposed or existing subdivision or which are scattered in open country, must have facilities designed and installed in accordance with State and local regulations. Individual water supplies and sewage disposal systems may be used only when other means are not available. Individual water and/or sewage disposal systems must be feasible and supporting factual data should include evidence that clearly shows individual systems will perform satisfactorily for a reasonable period of time at a reasonable maintenance cost. (See paragraph (a)(5)(iii), of this section for suggested types of evidence which can be required if any doubt exists.)

§ 1804.67 Streets.

(a) New subdivisions and expansion of existing subdivisions.

(1) Streets must conform to master street plans, design standards, and construction specifications of the applicable public body, city, town, county or state and the requirements of the FmHA Developments with more than 20 sites shall have two accesses available, unless an exception is granted by the State Director.

(2) Streets must be dedicated to and accepted by the public body which shall be responsible for continuous maintenance. Variations of this requirement shall not be authorized by the State director without prior approval of the national office.

(3) Hard-surfaced streets are mandatory in all new subdivisions and expansion of existing subdivisions except the State director may waive this requirement when all of the following conditions exist:

(i) Not required by local ordinance and codes.

(ii) Property or subdivision is not adjacent to streets that are, or soon will be, hard surfaced.

(iii) The street serves, or will serve, a subdivision of not more than 10 homesites in the foreseeable future.

(iv) The street has an all-weather surface approved by and maintained by a public body.

(v) The local authority to whom the street is to be dedicated does not have available the required equipment necessary for maintenance and will not accept dedication and be responsible for maintenance of hard-surfaced streets notwithstanding the fact that the hard surfacing would be provided initially by the builder-developer in accordance with standard local requirements and practices.

(vi) Other lending institutions and agencies active in the area will make housing loans or insure mortgages in the subdivision when it is provided only with all-weather streets.

(4) Hard surfaces or pavement are portland cement concrete, asphaltic concrete, and bituminous-wearing surfaces. Other hard-wearing surfaces may be used when acceptable to the local public body and acceptable to local climate, soil, gradient and volume, and character of traffic as determined by the State director; however, no variations of the hard surface may be authorized by the State director without prior approval of the national office.

(5) The State director with prior approval of the national office may waive hard-surfaced streets in the case of a new subdivision or a new expansion of an existing subdivision in which 10 or more homesites are proposed. The waiver request to the national office shall include the documentation of information contained in

paragraphs (a)(3)(i), (ii), (iv), (v), and (vi) of this section, and the following documents:

(i) Map indicating location of subdivision in relation to other subdivisions and/or towns with types of surfacing present on the access streets or roads to the proposed subdivision.

(ii) Complete street layout plan.

(iii) Street cross sections with other necessary details.

(iv) Topographic maps.

(v) Drainage plans.

(vi) All specifications for proposed street construction.

(vii) Other pertinent information.

(6) Streets shall have curb and gutter where required by local regulation or where necessary for drainage or protection of pavement edges. Where curbs and gutters are not provided, adequate shoulders of other suitable means shall be constructed to prevent ravelling of the roadway edges and shifting of the pavement base. (Refer to section 204-5 for right-of-way, pavement widths and parking requirements and section 204-6.2 for curb and gutter alternates in the booklet, "Site Development and Design Standards," available in the national office.)

(7) Preferably, homes should be occupied after street hard surfacing is completed; however, occupancy may occur after the pavement base is in place and properly cured. In cases of delays due to unsuitable weather conditions or when hard surfacing is not done by the builder-developer but by the local public body on a geographically sequenced moving schedule or on a seasonal basis, an all-weather street acceptable to the local public body shall be provided prior to occupancy.

(8) When the developer is responsible for providing street surfacing, a letter of certification; a performance and payment bond; escrow agreement, or similar assurance must be provided by the builder-developer to assure that the required street work will be completed within about 1 year from the date construction is started. The State director shall determine action and procedure according to local jurisdictional practices or requirements.

(9) Where local public bodies provide final surfacing, the subgrade and base shall be prepared according to the specifications of the local body. Written assurance shall be obtained from the public body that suitable hard surface will be provided within a reasonable period usually not more than 1 year.

(b) Existing subdivisions and scattered sites within the subdivision shall be approved according to the requirements in paragraphs (a)(1), (2), (6), and (8) of this section.

(1) Sites within existing neighborhoods shall be approved only if the street providing access to the lot is dedicated to and accepted by the local public body and acceptable to the FmHA. If the street is soon to be paved and the local authorities will assess such cost to the homeowners, the county supervisor shall inform applicants of these intentions.

(2) Sites outside of developed areas shall have direct access by means of publicly owned all-weather street which is not susceptible to blockage by flooding, subsidence, or other probable natural occurrences. Developments with more than 20 sites shall have two accesses available, unless an exception is granted by the State director.

(c) The requirements in paragraphs (a) and (b) of this section will not apply to an individual site for which a private extended driveway must be provided. The private access drive to one or two individual houses may have an all-weather wearing surface material. An easement will be established in both properties' deeds that provides for equal rights to use. An acceptable means of maintenance shall also be provided. The access driveway must be properly drained and must be located so as not to be susceptible to blockage by flooding, subsidence or other probable natural occurrences.

[38 FR 4500, Feb. 15, 1973, as amended at 39 FR 28871, Aug. 12, 1974]

§ 1804.68 Grading and drainage.

(a) *New subdivisions and expansion of existing subdivisions.* (1) All sites and/or streets which require 4 feet or more of cut or fill operations shall be designed by a registered land surveyor and/or engineer and shall comply with State and local regulations and the requirements of the FmHA as expressed in the requirements of FmHA.

(2) All streets and building sites shall have adequate invert elevations to provide for expedient runoff of storm water. All drainage design shall be executed by a registered engineer or land surveyor and will comply with State and local ordinances and regulations and the requirements of FmHA.

(3) The county supervisor shall seek the advice of the SCS regarding identification of soils and its characteristics that may reflect related problems in grading and drainage. The county supervisor shall obtain the SCS recommendations for possible solutions to soil problems that may exist.

(b) *For existing subdivisions and scattered sites.* (1) Dwelling sites shall not be developed which are subject to flooding or subsidence, are located on highly expansive soils or are subject to other undesirable conditions. If corrective measures are practicable, soil tests and analysis will be made by a competent engineering firm and the recommended corrective measures shall be implemented before the site is accepted.

(2) Design and construction of new sites shall not cause undesirable conditions for existing lots such as erosion, flooding, or subsidence.

(3) All sites shall conform to applicable State and local regulations and the requirements of the FmHA as expressed in the requirements of FmHA.

§ 1804.69 Lot layout.

(a) *For new subdivisions and expansions of existing subdivisions.* (1) All lots shall be surveyed and plotted by a registered land surveyor or engineer with permanent markers placed at all lot corners.

(2) Lots shall meet all requirements of State and local authorities and the FmHA.

(3) Lot arrangement shall provide for the most effective use of the building sites with minimum lengths of streets and utility runs.

(b) *For existing subdivisions.* (1) Lots shall meet the requirements of paragraphs (a)(1) and (2) of this section.

(2) Lots shall be considered in size and design with the existing development except where the prior design has proven uneconomical, infeasible or unmarketable.

§ 1804.70 Utilities.

Adequate, economic, safe dependable sources are required. An analysis shall be made of the cost of locally available sources of heat and the most practical and economical source shall be required.

(a) *Electricity.* Power supplier shall be consulted to assure that installation is coordinated with their service line plans. Lines must be placed underground where required and in other cases where economical.

(b) *Gas service.* Where adequate and dependable service is available, it shall be installed according to local requirements.

(c) *Street lighting.* Shall be provided when required.

(d) *Other utilities* such as telephone shall be available.

§ 1804.71 Modification of requirements and recommendations in this subpart.

(a) *Higher standards may be required.* The site development requirements of §§ 1804.65 through 1804.70 have been adopted as minimum standards and developers should be encouraged to go beyond the standards of these regulations. The State or local authority or the FmHA, however, may find it necessary to require standards above those contained herein whenever it determines that the public health and safety would be in danger. Some examples of considerations for justification for altering standards are:

(1) The site cannot be served adequately and economically with such public and central facilities and services as are normally required. For example, where the local public body does not have adequate drainage requirements, the State director may require more rigid specific drainage standards than required locally or than provided in this subpart. An example would be that in certain cases the street drainage system shall be tied in with irrigation or storm drainage systems to provide storm drainage in a controlled manner.

(2) Land proposed for use as building sites cannot be used safely for building purposes because of danger from flood or other inundation or as a result of natural conditions which could assure a menace to health, safety, or public welfare. For example, if the local minimum lot size of 10,000 square feet for use of individual septic tanks and seepage beds does not provide an adequate seepage bed area according to professional analysis of percolation tests and soil types on a particular site, the State director may raise the minimum requirement to that which will be safe and sanitary.

(b) *Reduced standards.* The State director shall not grant variances which may reduce the intent of this subpart. Such variances may only be made by the national office.

§ 1804.72 Subdivision reviews.

(a) *Feasibility submission.* When a county supervisor receives a request for subdivision feasibility analysis from a builder-developer, the county supervisor shall:

(1) Discuss with the builder-developer the Form FmHA 424-20 and any inadequacy of the required documents and determine the completeness of the submission for possible need for further information.

(2) Accompany the builder-developer to the proposed site to determine the feasibility of the location and to become familiar with the natural and fixed features influencing the site.

(3) Review the proposal to determine compliance with FmHA requirements, market demand and the local, regional and State planning policies and codes, regulations and ordinances.

(4) Offer suggestions to the builder-developer, when appropriate, as to how the design, plans, and specifications may be altered to improve the facilities and better serve the needs of the public. For revisions that require technical determinations, the builder-developer shall be requested to obtain additional technical assistance.

(5) When the proposed subdivision involves 10 or more building sites or involves a unique problem, the county supervisor shall forward the proposal package to the State director for further review. The county supervisor shall include his comments and recommendations in the remarks section of Form FmHA 424-20 or attach separate sheets thereto.

(i) The State director's review of the feasibility submission shall include a comprehensive study to assure compliance with all local, regional, and State regulations, codes, ordinances, plans for future development and compliance with the requirements of this subpart. In making this review, the State director shall utilize the services of the State Office Rural Housing Architect and the Community Services Engineer. The State director shall make recommendations in writing to the county supervisor so he can inform the builder-developer of the results of the review of the feasibility submission.

(b) *Preliminary submission.* When the county supervisor receives a preliminary submission from the builder-developer, the county supervisor shall:

(1) Review the comments concerning this development which were made at the time of feasibility analysis.

(2) Review the proposal to determine compliance with FmHA, requirements, the market and the local, regional, and State planning policies and codes, regulations and ordinances.

(3) Review the plans and specifications item by item with the builder-developer to avoid any misunderstandings as to intent, extent, kind and quality of work to be performed and materials to be used.

(4) Offer suggestions to the builder-developer, when appropriate, as to how the design, plans, and specifications may be altered to improve the facilities and better serve the needs of the public. For revisions that require technical determinations, the builder-developer shall be requested to obtain additional technical assistance.

(5) When the proposed subdivision involves 10 or more building sites, the county supervisor shall forward the proposal package to the State director for further review. The county supervisor shall include his comments and recommendations.

(i) The State director's review of the preliminary submission involving 10 or more building sites shall include a comprehensive study to assure compliance with all local, regional, and State regulations, codes, ordinances, plans for future development and compliance with the requirements of this subpart. In making this review, the State director shall utilize the services of the State Office Rural Housing Architect and the Community Services Engineer. The State director shall make recommendations in writing to the county supervisor so he can inform the builder-developer of the results of the review of the preliminary submission.

(c) *Final submission and evaluation.* (1) When the county supervisor receives a final submission of a subdivision proposal, he shall review the proposal to determine:

(i) The completeness of the plans and specifications.

(ii) The suitability and soundness of the proposal.

(iii) The compliance with the plans of local, regional, or State planning authority having jurisdiction, and

(iv) The compliance with the FmHA policies and standards.

(A) One set will remain in the county supervisor's office.

(B) One or two sets as appropriate, will be returned to the builder-developer after the final review and a determination has been reached.

(2) In the case of a proposed subdivision involving 10 or more building sites, the county supervisor shall forward the submission proposal with his comments and recommendations to the State director for final review.

(i) When the State director receives a final subdivision proposal, he shall again with the assistance of the Rural Housing Architect and Community Services Engineer, review the proposal for compliance, considering all the recommendations made on the preliminary submission and with the applicable local, regional, and State plans and regulations and the compliance with the FmHA policy, regulations and technical standards.

(ii) The State director shall recommend to the county supervisor the actions to be taken in the form of one of the notification letters described in paragraph (d) of this section. The recommendations shall include any minor changes that should be considered by the builder-developer for improvement of the design.

(iii) The State director shall retain one copy of the proposed subdivision documents and return two copies with his recommendations to the county supervisor.

(3) The following chart outlines the review and acceptance authority of the county office, State office, and the national office with respect to a subdivision proposal:

Number of building sites	Subdivision proposal—Acceptance authority		
	C/S County supervisor	S/O State office	N/O National office
0-9	Yes—the C/S may accept and process a subdivision proposal	S/O may advise C/S when requested	
10-25	No—for 10 or more sites submit to S/O with recommendations	Yes—when individual systems are proposed S/O documents infeasible central system—returns to C/S with recommendations	
More than 25	No—for more than 25 sites submit to S/O with recommendations	Yes—unless other than standard hard-surfaced streets are proposed and/or individual water and/or waste disposal systems are proposed	Yes—when other than standard hard-surfaced streets are proposed and/or individual water and/or waste disposal systems are proposed

(d) *Notification letters.* (1) The county supervisor will notify the builder-developer in writing concerning the status of the proposal at the feasibility, preliminary, and final processing review stages. This notification will consist of either:

(i) A letter of acceptance suggesting that the builder-developer may continue with preparations of the proposal according to this subpart and any requirements or suggestions for improvement for further submission to FmHA.

(ii) A letter setting forth the reasons why the proposal is unacceptable.

(2) The builder-developer, when he receives the notification letter shall consider all the recommendations of the FmHA before proceeding further with the proposal.

§ 1804.73 Performing development.

All development will be arranged for and completed by the builder-developer according to local, State, or Federal regulations and requirements including applicable health and safety standards pertaining to building construction or development and the requirements of this subpart.

(a) The FmHA will not become a part of any construction contract. The builder-developer will execute all the contract documents with competent contractors and subcontractors and they will provide their own necessary, applicable and acceptable bonding and insurance normally required for performing the type of work necessary to assure completion of the work.

(b) The work will be performed in accordance with FmHA accepted plans and specifications.

(c) Written assurance of completion by responsible public authority will be required when local, city, county, State, or other public authority codes, regulations and ordinances require inspections of final acceptance. This written assurance of completion will be required prior to final acceptance by the FmHA.

§ 1804.74 Planning and submission of documents.

(a) Feasibility documents for planning and performing site development work to be submitted to the applicable FmHA county supervisor by the builder-developer.

(1) *Location map.* A general site location map of the area indicating the access roads or future roads to the site as well as the proximity to shopping, schools, churches, major transportation facilities with note of traffic volumes. If a satisfactory map of the locality is not available, a clear and preferably scaled rough sketch map that provides the required information will be sufficient.

(2) *Property survey map.* A survey showing the boundaries as well as all existing known features specifically including utilities, access roads, flood plains, drainageways, rock outcroppings, and wooded areas, or specimen trees. If a current survey does not exist, the builder-developer shall submit the most accurate document which is available.

(3) *Topographic map.* If a published topographic map is not available from the U.S. Coast and Geodetic Survey, USDA-Soil Conservation Service, U.S. Army Corps of Engineers or Regional Agency such as Tennessee Valley Authority and local, county, regional, or State planning authorities, the builder-developer may substitute a sketch. This sketch should include approximate grade elevations and drainage patterns of the surrounding area that may influence or be influenced by development of the subject subdivision. Photographs of the area either at eye level, above the ground or aerial may be submitted to further explain the sketch.

(4) *Soils map or report.* Where available, a complete soils map or report from the local, county, or the U.S. Department of Agriculture, Soil Conservation Service Office, should be included with the feasibility submission. The SCS local office should be consulted for any additional information that may be appropriate for the proposed site.

(5) *Market survey.* Where available, a market survey from the Department of Housing and Urban Development should be included with the feasibility submission. If not available, the developer should present his estimate of the market.

(6) *Energy considerations.* A discussion of the energy efficiency of the proposed site relative to the alternative sites. This discussion should include energy required for site preparation, installing utilities, providing services, and vehicular transportation of the occupants, as applicable to the proposed development. Demonstrate how energy considerations influenced selection of the site and development of concepts for the project design.

(7) *Other.* Option information the sponsor may wish to present such as:

(i) Engineering report relative to the feasibility of central utilities by extension or creation of same onsite.

(ii) House plans and specifications.

(iii) Site development information.

(b) *Preliminary submission documents*—(1) *Location map.* Same as feasibility documents.

(2) *Property survey.* A survey showing the exact boundaries and corners of the property accompanied by a written description of said boundaries. Also, included are locations of predominant features such as utilities, easements, access points, flood plains, drainage ways, rock outcroppings, and wooded areas or specimen trees. This document shall bear the seal of a professional surveyor or engineer.

(3) *Topographic map.* An accurate topographic map with a scale compatible with the size of the project. The site shall be shown at a reasonable scale usually 1″ = 100′ with 5-foot contour intervals. Where the site is unusually level or steep, the contour intervals may be varied accordingly.

(4) *Soils map and report.* A complete soils map or report is available from the U.S. Department of Agriculture, Soil Conservation Service at the local county SCS office.

(5) *Preliminary subdivision plan.* A line drawing, to scale, showing proposed street locations and widths, lot layouts, major drainageways, and other development planned. Preliminary sections and details shall be provided for the street surfacing, curb and gutter and other physical improvements. Current and known planned usage of adjacent land shall be shown.

(6) *Preliminary dwelling plans and specifications.* If the builder-developer intends to construct the dwelling units, he should at this time, submit preliminary floor plans and specifications, elevations and sample site plans showing the placement of the unit on the individual lots.

(7) *Statement of regulation compliance.* Local, county, or State as applicable. If change of zoning or variance is required, the status of the variance or change of zoning shall be documented.

(8) An executed contract for professional technical services.

(9) Statements of approval and feasibility for water and/or waste disposal systems as follows:

(i) Approval to tie in with local existing water and/or waste disposal systems when available.

(ii) Tentative approval of local or State health authority for individual water and/or waste disposal systems when it is clear that central systems are infeasible at this time. Use § 1804.66(a)(5) as a guide in preparing information required.

(10) Evidence that appropriate public body will accept and maintain streets and/or common areas when dedicated to said body.

(11) Preliminary outline specifications describing all the proposed materials to be used and how they are to be applied. These are only the materials used in the land development and improvement construction for the streets, drainage, and utility work.

(12) A copy of the covenants prior to recording.

(13) *Incremental slopes plan.* If areas of common slope are not identified elsewhere in adequate detail, this information should be provided in a separate plan.

(14) *Preliminary grading plan.* To indicate degree of work required to provide positive drainage of all building sites and control measures to be taken to eliminate soil erosion. Dwelling locations may be shown if they can be predetermined.

(15) A copy of the subdivision plat prior to recording.

(c) *Final submission documents.* When the proposed subdivision involves 10 or more lots or homesites, three copies of each item will be required. In cases of less than 10 sites, the county supervisor may request only two copies of each item. All items requiring revision of more detailed information as determined by the State office review of the preliminary submission will be completed and included in this final submission. All documents shall be executed in a professional manner and shall carry the appropriate designation attesting to the professional qualifications of the land planner, architect, or engineer. All docu ments will be accurately drawn at an appropriate scale. Documents will include at least the following:

(1) Location map.

(2) Property survey map.

(3) Topographic map of the site and surrounding area influencing or influenced by drainage on the site.

(4) Incremental slopes map where slopes exceed 6 percent.

(5) Soils map (where available).

(6) Streets, alleys, easements, lot layout plans with details of any pavements, curbs, gutters, ditches, culverts, retaining walls, sidewalks, and any other necessary details for construction. Include recreational and other special purpose or common areas. Dwelling locations are not mandatory; however, they may be shown on the lot layout plan in lieu of individual plot plans if conditional commitments are involved and dwelling locations can be predetermined. Scale should be 1″ = 40′ when dwellings are shown and all drainage and utilities are included on the drawing.

(7) Drainage plans including sewers, both sanitary and storm; manholes; drainage piping and all details thereto may be combined on lot layout plan if scale is 1″ = 40′ or larger.

(8) Grading plan and cross sections through streets.

(9) Water supply and waste disposal system plans and details not included elsewhere.

(10) Detailed plans and necessary specifications for other utilities such as natural gas lines; telephone; street lighting when applicable; street signs; and other utilities and their required easements and details.

(11) Landscaping plan for applicable areas especially common areas or protective screening. Detailed plan for existing tree preservation with details for protection during construction and/or if fills or cuts are involved.

(12) Aerial or ground photographs of the area to be developed if available.

(13) Typical dwelling site plan for each site involving a characteristic situation when dwelling locations can be predetermined. Drawings should be at a scale of at least 1″ = 20′ or ⅛″ = 1′0″. Where the builder-developer will construct the buildings the dwelling site plans will be required.

(14) Written statement of approval by local, regional, or State planning commission or authority having jurisdiction over the area.

(15) Written statement of local or when applicable, State approval of water systems, waste disposal systems, and solid waste disposal facilities.

(16) Written statement that streets have been dedicated to and accepted by the public body which shall have the responsibility for continuous maintenance.

(17) Written statement of the utility companies' willingness to service the area.

(18) Complete specification for all development proposed.

(19) A copy of the recorded subdivision plat.

(20) A copy of the recorded covenants.

(21) Other items that may be required in any particular situation.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO 29 FR 14764, 33 FR 9850)

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PART 1806—INSURANCE

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EXHIBIT A—COVERAGE AND PREMIUM RATES
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AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Real Property Insurance

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO 29 FR 14764, 33 FR 9850, unless otherwise noted.

SOURCE: 41 FR 34571, Aug. 16, 1976, unless otherwise noted.

§ 1806.1 General.

(a) *Authority.* This Instruction prescribes the authorizations, methods, and procedures to be followed in obtaining and servicing property insurance on buildings and on owned or leased land securing the interest of the Farmers Home Administration (FmHA) in connection with Farmer Program (FP), Rural Housing (RH), Labor Housing (LH), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Recreation Loans (RL), Other Real Estate (ORE), Soil and Water (SW), Timber Development (TD), and Land Conservation and Development (LCD) loans. For the purpose of this instruction, FP means direct and insured individual farm real estate, operating and emergency loans secured by real estate.

(b) *Borrower to furnish insurance.* The real estate mortgage executed by the borrower provides that he will furnish and continually maintain and pay for insurance on buildings situated or constructed on the property with companies, in amounts, and on terms and conditions satisfactory to the FmHA until the loan is repaid.

(c) *Borrower's selection of company.* The borrower may select the insurance company provided that the company and insurance policy comply with all the requirements set forth in this Instruction.

(d) *Responsibility.* The County Supervisor is responsible for taking all actions in connection with insurance as may be necessary to protect the security interest of the FmHA. Any unusual situation that may arise with respect to obtaining or servicing insurance should be referred to the State Director. The State Director will refer any questions of a legal nature to the Office of the General Counsel (OGC).

(e) *Use of Form FmHA 426-1, "Valuations of Buildings."* The minimum insurance required will be indicated in the appraisal report by the employee who makes the appraisal of property that includes insurable buildings. In the case where no real estate appraisal is required or the appraisal report does not indicate the minimum insurance coverage, Form FmHA 426-1 will be prepared by the County Supervisor. Reevaluation of the buildings will not be done on appraisal reports, however, when new buildings are constructed or values increase or decrease materially and reevaluation is necessary to properly reflect the buildings' security interest of the FmHA, the County Supervisor will prepare or revise Form FmHA 426-1 as appropriate. Changes made on an existing Form FmHA 426-1 will be dated and initialed. The reason for any deletion will be noted on the Form.

§ 1806.2 Companies and policies.

Property insurance policies or other evidence of insurance will be accepted from borrowers when the requirements outlined herein are complied with fully.

(a) *Companies.* It is desirable that companies be licensed to do business in the particular State or other jurisdiction where the property is located, or that they be otherwise authorized by law to transact business within such State or other jurisdiction (hereinafter called "State"). If the required insurance is not available locally at comparable rates from an insurance company licensed or otherwise authorized to do business in the State, insurance may be accepted from another company if (1) the OGC advises that policies issued by such company will not be rendered unenforceable by reason of the company's failure to be licensed or otherwise authorized to transact business in the State and that the company is a legal entity whose may be sued in the State where the insured property is located, and (2) the State Director determines that the company is reputable and financially sound. In making the above determinations, the State Director will consider all relevant available information such as that which may be obtained from financial statements, Best's Insurance Reports, State insurance authorities, and other lending institutions.

(b) *Insurance policies*—(1) *Standard policies.* If a standard fire insurance policy has been adopted for the State it should be used unless State statutes exempt the company from the regulations requiring its use. The standard policy is one containing substantially the same standard provisions adopted or recommended by legislative action or by order of the supervisory insurance authorities of the State in which the security is located.

(2) *Other policies.* To be acceptable, any other insurance policies must conform to the requirements of this Instruction.

(i) "Homeowner's" policies, "All Physical Loss" policies, "Broad Form" policies, and other such all-inclusive policies are acceptable if they otherwise meet the requirements of this Instruction.

(ii) A builder's risk policy naming the borrower as the insured or a builder's risk endorsement for a policy issued to the borrower may be accepted during the period a building is under construction if the policy otherwise meets the requirements of this Instruction. If such a policy or endorsement does not automatically convert to full coverage when the building is completed, acceptable insurance must be obtained simultaneously with the expiration of the builder's risk provisions of the policy.

(iii) A builder's risk insurance policy issued to a contractor only may not be substituted for the property insurance, the borrower is required to provide.

(iv) Borrowers eligible for insurance under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Act of 1973, will be serviced in accordance with Subpart B of this part.

(3) *State instructions.* If the State Director and the OGC consider it advisable, a State Instruction may be issued to help County Supervisors identify standard insurance policies adopted for the State. The Instruction should also furnish a guide to assist in identifying other acceptable insurance policy forms that are commonly used by insurance companies in the State, recognizing that such information is not all inclusive.

(4) *Binders.* Whenever there is a justifiable reason for not issuing a policy or endorsement, as required, a written binder will be acceptable for a period not to exceed 60 days from the effective date of the insurance. Form FmHA 426-7, "Insurance Binder," may be used in lieu of a standard binder form provided by the insurance company or agent. The written binder must have attached thereto the approved form of mortgage clause. Such a binder will be submitted to the County Supervisor in lieu of an insurance policy or endorsement and the insurance policy or endorsement will be submitted on or before the expiration date of the binder. The State Director, with the advice of the OGC and subject to prior approval of the National Office, may issue a State Instruction authorizing such binders to be accepted for periods longer than 60 days.

(5) *Submission of policies.* The original policy or declaration page must be delivered to the County Supervisor by the borrower, except that a certificate of insurance, a copy of the policy, or other evidence of insurance is acceptable for loans which are secured by other than first liens if the mortgage clauses include the names of prior mortgagees. For FP and Section 502 RH loans the County Supervisor will not retain the insurance policy or declaration page after the loan has been outstanding for one year. The County Supervisor will return the insurance policy of FP and Section 502 RH borrowers and notify each borrower by using Form FmHA 426-4, "Notice of Expiration of Insurance (For FP and Section 502 RH Borrowers) available in any FmHA Office," of his continued responsibility to provide and maintain proper insurance. The County Supervisor will not, however, be responsible

for further checking or monitoring to see that a FP and Section 502 RH borrower insures security property and will process a SF 1034, "Public Voucher for Purchases and Services Other Than Personal," to pay for insurance only in strict compliance with provisions of § 1806.6.

(6) *Master sets.* If the master sets meet all of the requirements of this Instruction they may be accepted in lieu of an original policy for each FmHA borrower.

(i) One complete master set of the different insurance forms for policies issued by the insurance company must be on file in each County Office where the company insures property of FmHA borrowers.

(ii) The "Declaration Page" furnished by the insurance company for each borrower insured, in lieu of a complete policy, will be filed in the borrower's case folder. When a "Declaration Page" in the form of a computer printout is used by an insurance company an endorsement on every policy issued by that company or a letter from that company will be obtained and attached to the printout. However, a letter signed by an authorized official of the company and addressed to the State Director may cover all policies issued by that company in the State. Any such endorsements or letters should clearly state that the company considers the printout to be an original "Declaration Page". Such endorsements or letters are not necessary if the printout itself clearly states that it is an original "Declaration Page."

(7) *Name and location.* The policy should contain names of all the borrowers who are owners of the property being insured, and it will be returned for correction if it does not do so. The location of the property should be so described in the policy that the property can easily be identified. The complete legal description of the property by metes and bounds is not required. Any deviation from the requirements of this paragraph must first be cleared with the National Office.

(8) *Loss or damage covered.* Buildings must be insured against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, and smoke.

(9) *Effective date of insurance.* If there are insurable buildings located on the property, the borrower will arrange with his agent or company to have adequate insurance in force at the time the loan, assumption, or credit sale is closed so that the policy will properly insure the borrower and the mortgagees. When new buildings are erected or major improvements are made to existing buildings, such insurance will be made effective as of the date materials are delivered to the property. The County Supervisor will make no payments from loan funds for labor or materials until the borrower has furnished adequate insurance to protect the interest of the FmHA in the buildings being erected or improved.

(10) *Term.* The borrower will be required to furnish insurance for a term of at least one year with evidence that a full year's premium is paid. The term "premium" as used herein includes any assessments which may be charged to the borrower. If the assessments are of the type imposed only after a loss occurs involving property insured by the insurance company, then the borrower must present evidence (such as a letter from the company) that he currently does not owe any such assessments. The borrower may receive a discount for insuring for a longer period such as three years or five years and with an annual premium. If the insurance contains an automatic renewal clause, its provision should be substantially the following to be acceptable to FmHA:

> This policy will be automatically extended for successive terms at expiration of the original term and of each extension thereof, upon payment of renewal premiums. It is a condition of this policy that if the policy expires [illegible] is canceled for nonpayment of premium, or for any other reason, the mortgagee will be given 10 days notice.

(11) *Mortgage clause.* The standard mortgage clause adopted by the State must be attached to or printed in the policy, or Form FmHA 426-2, "Property Insurance Mortgage Clause (Without Contribution)," must be attached to or the provisions thereof printed in

the policy. A letter signed by an authorized official of an insurance company to the State Director, stating that all insurance policies the company issues in the State and in which the FmHA has a mortgage interest incorporates all of the provisions of Form FmHA 426-2 may be accepted in lieu of attaching Form FmHA 426-2 to each policy. If such a blanket letter is used, the FmHA will be named in the loss payable clause and a State Instruction will be issued, after prior approval is obtained from the National Office, authorizing the use of such method.

(i) If the use of a mortgage clause, other than the standard mortgage clause (without contribution), has been made mandatory by State laws or insurance regulations, a State Instruction will be issued, after prior approval is obtained from the National Office, authorizing the use of such a form.

(ii) When an approved mortgage clause is printed in the policy a "Loss Payable Clause" is acceptable provided the FmHA, as mortgagee, would receive payment in case of loss even though the company would not be liable to the borrower. A "Loss Payable Clause" which contains the statement that the mortgagee is "subject to all terms and conditions of the policy" is not acceptable.

(iii) Whenever a new mortgage clause including the interest of the FmHA is issued after the policy has been in force, the new mortgage clause must be signed by an authorized agent or officer of the company that issued the policy. Form FmHA 426-6, "Transmittal of Property Insurance Mortgage Clause," may be used to transmit the mortgage clause to the insurance official.

(iv) The FmHA and all other mortgagees whose interests are insured by the policy will be shown either in the mortgage clause or in the "Declaration Page" in the order of priority of their mortgages.

(A) "United States of America (Farmers Home Administration)" will be named in the mortgage clause for direct and insured loan mortgages naming FmHA as mortgagee, whether in its own right or as trustee under a 2(f) or other agreement with a State Rural Rehabilitation Corporation.

(B) "United States of America (Farmers Home Administration), as first mortgagee or as statutory agent and insurer of such mortgagee," will be named in the mortgage clause for insured FO mortgages naming the lender as mortgagee, whether the mortgage is held by the original or a subsequent lender or by the insurance fund or by FmHA under a trust agreement or declaration of trust.

(C) If the designation is not identical to that set forth in paragraphs (b)(11)(iv)(A) or (B) of this section, whichever is applicable, it will be sufficient if the mortgagee is readily identifiable as the Farmers Home Administration.

(c) *Evidence of premium payment.* (1) When Form FmHA 426-2 is attached to or the provisions thereof are printed in the policy, or a blanket letter from an insurance company incorporating the provisions of Form FmHA 426-2 in all policies in which the FmHA has a mortgagee interest in effect, in accordance with paragraph (b)(11) of this section, no evidence of premium or assessment payment is required except for the first year of the loan. When a subsequent FP or Section 502 RH loan is made to build, buy or rehabilitate essential buildings an endorsement to the existing policy including coverage for the property improved will be sufficient.

(d) *Policy restrictions.* (1) Any insurance on essential buildings as defined in § 1806.3 having restrictions which limit the amount of collectable insurance must meet the FmHA requirements set forth below (except for the clause described in paragraph (d)(1)(iv) of this section which is never acceptable); otherwise, such restrictions must be eliminated or modified to afford the required protection.

(i) *Coinsurance clause.* This clause generally provides that in consideration of a reduced rate, the borrower agrees to maintain insurance on his buildings up to a specified percentage (usually 80 percent) of their value and that the company will not be liable for a greater proportion of any partial loss than the amount of insurance bears to the specified percentage of either the undepreciated replacement value or the depreciated replacement value or the depreciated replacement value (actual cash value) of the buildings at the time of the loss. When the buildings are insured for the specified percentage of their value, the company, in the event of a partial loss, will be liable for the full amount of the loss not to exceed the amount of insurance. A coinsurance clause can be accepted only where the amount of insurance is at least equal to the specified percentage of either the undepreciated replacement value or the depreciated replacement value (actual cash value). For example, an 80 percent coinsurance clause can be accepted only where the amount of insurance on each insured building is at least equal to 80 percent of the appropriate replacement value of the insured building.

(ii) *Three-fourths' value clause.* This clause provides that the liability of the company shall be limited to three-fourths of the depreciated replacement value of the buildings covered at the time of the loss, not to exceed the amount of insurance. This clause may be accepted if the unpaid balance of the loan is not greater than three-fourths of the depreciated replacement value of the building and the amount of insurance is at least equal to the unpaid balance of the loan and any prior liens and no building is insured for more than three-fourths of its depreciated replacement value.

(iii) *Loss deductible clause.* This clause generally provides that loss to each building to the extent of the limitation is not recoverable. The company is liable only for loss to each building in excess of such limitation stated in the clause. This clause may be accepted where the limitation does not exceed $150, or one percent of the insurance coverage whichever is greater. In no case, however, may the limitation on any one building exceed $500.00.

(iv) *Three-fourths' loss clause.* This clause provides that the company will not pay more than three-fourths of any loss, nor more than three-fourths of the amount of insurance in force. This clause is never acceptable and must be eliminated.

(v) *Deferred loss payable clause.* This clause provides that, if the amount payable under the policy for any loss to any building insured shall be in excess of a specified portion, (usually 60 percent) of the amount of insurance on such building, the company will withhold from its initial loss payment any sum in excess of the specified portion of the amount of insurance on such building. If the building sustaining such loss is repaired or replaced within six months from the date of the fire and at or within 300 feet of the original location, as described in the policy, the company upon receipt of evidence to that effect from the insured will pay the full balance withheld from the initial payment, provided the amount expended in repairing or replacing the building damaged or destroyed will equal or exceed the amount of loss as determined under the terms of the policy. Failure to repair or replace any insured building within the time and manner provided will constitute acceptance of the initial payment as full and final settlement under the policy with respect to the loss. This clause may be accepted if the amount of insurance is for the full depreciated replacement value (actual cash value) of the building and the unpaid balance of the loan and any prior lien(s) is not greater than the initial loss payment made by the company.

(vi) *Construction specifications and use conditions.* If the insurance policy contains clauses which specify certain standards of construction or prescribes certain uses of the property for the insurance to be valid, the policy is acceptable only if the property meets such specifications or conditions at the time of acceptance. For example, if the policy provides that the chimney be constructed of a certain type of material, the County Supervisor should be assured that the required material has been used, or if the policy provides that farming operations are not carried out on the premises he should be assured that this condition is met.

(2) Policies generally will not be accepted if, under the terms of the policies or local laws, contributions or assessments may be made against the FmHA. However, policies which

impose assessments on the borrower may be accepted only if the FmHA mortgage will be recorded prior to any failure of the borrower to pay any such assessments. Policies also will not be accepted if, by their terms or other conditions, loss payments are contingent upon collective action by the Board of Directors, or the stockholders, or the members.

(c) *Buildings on leaseholds.* The policy will indicate that the insured is the lessee or tenant and not the owner of the buildings securing the FmHA loan, or, if he is the owner of the building on the leased land, the policy will indicate that the insured is the owner of the building, but not of the land. State Directors, with the advice of the OGC will issue State Instructions to meet any other special requirements needed to conform with the insurance requirements of the State to enable leaseholders to obtain property insurance for buildings which are security for FmHA loans.

(7 U.S.C. 1989; 42 U.S.C. 1480; 40 U.S.C. 442; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 P.L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegations of authority by Director, OEO, 29 FR 14764, 33 FR 9850)

[41 FR 34571, Aug. 16, 1976, as amended at 41 FR 49990, Nov. 12, 1976; 42 FR 33262, June 30, 1977; 43 FR 56013, Nov. 30, 1978; 44 FR 45115, Aug. 1, 1979]

§ 1806.3 Coverage requirements.

The County Supervisor should encourage the borrower for his own protection to insure for their depreciated replacement value (actual cash value) all essential buildings. Essential buildings include the dwelling and any other buildings that are necessary for the operation of the property or that provide income to assure orderly repayment of the loan. If insurance is for less than the depreciated replacement value of all essential buildings, the County Supervisor will see that the coverage is obtained on one or more of the most essential buildings. The minimum amount of coverage will be furnished as prescribed below:

(a) *Loans secured by a first lien.* (1) When the unpaid balance of the FmHA loan secured by a first lien is equal to or greater than the depreciated replacement value of the essential buildings, or the cost of adequate essential buildings which can be constructed for amounts less than the depreciated replacement value of the existing buildings, the essential buildings will be insured, to the nearest multiple of insurance that is available, for the lesser of (i) their depreciated replacement value, or (ii) the cost of constructing adequate essential buildings. For example, if insurance is available in only multiples of $1,000, the minimum insurance required on an essential building valued at $6,600 would be $7,000, and that required on an essential building valued at $6,400 would be $6,000.

(2) When the unpaid balance of the loan is less than the sum of the depreciated replacement value of the essential buildings to be insured, the total amount of insurance must be at least equal to the lesser of (i) the unpaid balance of the loan, or (ii) the cost of adequate essential buildings which can be constructed for amounts less than the depreciated replacement value of the existing buildings to be insured.

(3) When, by the use of loan funds or otherwise, buildings are erected or substantial improvements are made to essential buildings, the amount of insurance will be adjusted in accordance with paragraphs (a)(1) or (2) of this section, whichever is applicable.

(b) *Loans secured by other than first liens.* The amount of insurance on buildings in the case of FmHA loans secured by other than a first lien will be the same as required in paragraph (a) of this section, with the understanding that the unpaid balance of the loan will be deemed for this purpose to be the amount of the total real estate mortgage indebtedness owed all prior mortgagees named in the mortgage clause, plus the debt to the FmHA which is secured by real estate mortgage.

(c) *Exception of buildings from insurance.* (1) Insurance will not be required on a building:

(i) That is not essential.

(ii) In such a state of disrepair that the cost of insurance would be prohibitive.

(iii) Which has a depreciated replacement value of $2,500 or less.

(iv) Which is being or has been repaired with a section 504 loan. Families receiving section 504 loans should be encouraged but not required to carry insurance on their home.

(v) On LH security property which was not built or repaired with FmHA loan funds provided that the State Director determines that the land and other structures adequately secure the FmHA loan and any prior liens.

(vi) On which the hazards are so slight because of the character and construction of the building, or the cost of the insurance is so high in comparison with the value of the building that, according to common standards of judgment, it should not be insured, including but not limited to windmills, silos, and fire-cured tobacco barns.

(vii) In cases where the unpaid balance of the FmHA loans and any prior liens have been reduced to $2,500 or less, property insurance need not be required if the borrower wants to discontinue it, provided the County Supervisor determines that the value of the land security itself is sufficient to protect the FmHA in its collection of the amount of the outstanding indebtedness.

(viii) If insurance for windstorm and hail to meet all FmHA requirements is not available in a hurricane area, the County Supervisor may accept from the borrower or applicant the windstorm and hail insurance policy that most nearly conforms to FmHA requirements. If such an exception is made, the situation should be fully documented in the borrower's case file. However, if the best insurance policy a borrower or applicant can obtain at the time he receives a loan contains a loss deductible clause for windstorm and hail damage exceeding $250 or 10 percent of the actual cash value of the buildings, whichever amount is greater, the insurance policy, with an explanation of the reasons why more adequate insurance is not available will be submitted to the State Office for prior approval.

§ 1806.4 Examining and general servicing of insurance.

(a) *Examination by county office of policies, endorsements, binders, and other evidence of insurance.* Upon receipt in the County Office of a policy, endorsement, binder, or other evidence of insurance, submitted by a borrower, it will be examined promptly for compliance with the requirements of this Instruction. If the evidence of insurance is found to be acceptable, it will be placed in the borrower's case folder.

(1) *Unacceptable policies.* (i) When the borrower furnishes any policy or other evidence of insurance which does not meet the requirements of this Instruction such policy or other evidence of insurance will be returned to the borrower with the reasons why it is not acceptable.

(ii) If the borrower does not furnish acceptable insurance by the date the previous policy expired or was canceled, the County Supervisor will proceed as provided in § 1806.6.

(2) *Expiration records and notices.* After the insurance has been accepted, the expiration date will be inserted on Form FmHA 405-1, "Management System Card—Individual," or Form FmHA 405-5, "Management System Card—Individual (Rural Housing Only)," or Form FmHA 405-10, "Management System Card—Association or Organization," or Form FmHA 405-12, "Monthly Insurance Expirations," as provided in FmHA Instruction 405.1 for servicing the renewal of the insurance.

(i) In cases other than those involving FP or section 502 RH borrowers, the County Supervisor will notify the borrower of the expiration of his insurance at least 30 days in advance of such expiration unless he has received written evidence that the insurance has been renewed. Form FmHA 426-3, "Notice of Expiration of Insurance," may be used for this purpose.

(ii) FP and Section 502 RH borrowers will be informed during the tenth month after the date of loan closing of their responsibility to carry insurance. Form FmHA 426-4 will be sent to these borrowers, regardless of whether there is evidence that the insurance has been renewed. Thereafter, the County Supervisor will not be required to further determine whether the borrower has adequately maintained insurance; however, if a further notice of expiration is received in the County Office, the County Supervisor will again notify the borrower by using Form FmHA 426-4 of his responsibility.

(3) *Release of mortgage interest.* When the borrower's loan has been paid in full and the satisfaction or release of the mortgage has been executed, the County Supervisor or his delegate will execute the following Release of Mortgage Interest on the mortgage clause attached to the policy or other evidence of insurance and transmit it with the policy or other evidence of insurance, the paid-in-full note, and the satisfaction to the borrower:

> It is understood and agreed that the interest of the United States of America in the property insured hereunder ceased as of (Date of Final Payment), and that the Government shall have no interest in any loss or damage to such property occurring thereafter.

(4) *Lost or misplaced policies.* When an unexpired insurance policy or other evidence of insurance is lost or misplaced, it will be necessary to obtain a replacement policy or other evidence of insurance. The County Supervisor is authorized to sign a Lost Policy Receipt on behalf of the FmHA. For FP and section 502 RH loans, this paragraph applies only during the period the policy is retained in the County Office.

(5) *Disposition of expired and canceled policies.* An expired or canceled policy or other evidence of insurance will be returned to the borrower, unless there is a loss settlement pending.

(b) *Special servicing of insurance.* (1) *Vacancy or unoccupancy—tenant occupancy—increased hazard.* If the County Supervisor has knowledge that insured property is vacant or unoccupied or that the ownership or occupancy has changed from owner to tenant, or that the hazards otherwise are increased, he will examine the policy to determine whether the policy permits such conditions. Unless the insurance permits such conditions, the County Supervisor will immediately notify the company or agent in writing. In any case where there is an additional premium due because of vacancy, unoccupancy, tenant occupancy, or other increased hazard, and upon demand to FmHA from the company or agent because the borrower cannot, or will not, pay the additional premium, it may be paid by Standard Form 1034, "Public Voucher for Purchases and Services Other than Personal," to the company or agent. For FP and Section 502 RH borrowers, Std. Form 1034, "Public Voucher," will not be used except in cases where an unusual and severe hazard exists and insurance is necessary to protect the interests of the Government.

(2) *Transfer of property.* (i) When a borrower or transferee requests the consent of FmHA to a transfer of the security property which already has been made, or when the County Supervisor learns that any such transfer has been made, he will immediately inform the transferee that the mortgage requires the owner to provide and maintain adequate insurance acceptable to, and with loss payable to, FmHA as mortgagee. The transferee may obtain a new insurance policy or the transferor may have the insurance company or agent issue an endorsement to the current insurance policy changing the name of the assured to that of the transferee. If a new insurance policy is obtained, the old policy or other evidence of insurance will be returned to the transferor unless there is an unsettled loss. If there is an unsettled loss, the policy or other evidence of insurance will not be returned until the claim has been settled. The County Supervisor, with the concurrence of the State Director and the OGC, will notify the borrower and transferee that acceptance of the new policy or endorsement will not constitute consent by the Government to the transfer even though the Government is protected by a loss payable clause in such an insurance policy.

(ii) In a transfer with assumption, insurance will be required in the same amount and according to the same provisions as for an initial loan of the same type.

(3) *Voluntary conveyance of property to the Government and foreclosure.* Insurance will not be carried on buildings which the Government has acquired. After a foreclosure sale has been held, or after a deed of conveyance to the Government in lieu of foreclosure has been filed for record, insurance will not be maintained by the Government (whether or not subject to redemption).

[41 FR 34571, Aug. 16, 1976, as amended at 42 FR 33262, June 30, 1977; 50 FR 39658, Sept. 30, 1985]

§ 1806.5 Losses.

(a) *Protecting property.* It is the responsibility of the borrower to immediately notify the County Supervisor and insurance company or agent of any loss or damage to insured property and collect the amount of the loss. When the County Supervisor learns of a loss to property which secures an FmHA loan, he will:

(1) Check the borrower's casefile for an insurance policy or other evidence of insurance. When a policy or other evidence of insurance has not been retained by the FmHA, such as for FP and section 502 RH borrowers, the County Supervisor will determine whether the property was insured and whether FmHA was named as mortgagee in the insurance policy.

(2) Determine that the borrower has taken such steps as are necessary to protect the interest of the FmHA in the security property against further damage. When serious problems arise with respect to protecting the property from further damage, the borrower cannot or will not arrange adequate protection for the property, or when legal action appears to be necessary, the County Supervisor will arrange for emergency protection and immediately refer the case with complete information to the State Director.

(b) *Loss covered by insurance.* (1) If the FmHA is listed as mortgagee in the insurance policy, the County Supervisor will collect the amount of the loss and may consent to the borrower using funds to repair or replace damaged or destroyed property or to apply loss proceeds to his loan account or to any prior liens that might exist in the order of their priority.

(2) If the FmHA is not listed as mortgagee in the insurance policy, the County Supervisor will contact the borrower to determine whether he has received the loss proceeds. If the borrower has received the loss proceeds but not yet paid for improvements to repair or replace the property, or has not received the loss proceeds the County Supervisor will:

(i) Notify the insurance company in writing of the FmHA's interest in the security property and request that the loss proceeds be made payable jointly to the FmHA and the borrower.

(ii) Inform the borrower of his responsibility for repairing or replacing the damaged or destroyed property or for authorized disposition of the loss proceeds as outlined in paragraph (b)(1) of this section.

(c) *Loss drafts—when loan is secured by a first mortgage.* (1) A loss draft which in the opinion of the County Supervisor represents a satisfactory adjustment of the loss will be endorsed immediately without recourse and deposited in a supervised bank account to be used in repairing or replacing the damaged building, except:

(i) Where the amount of the loss is $1,000 or less and the borrower will use the funds for repairing or replacing an essential building, the loss draft may be endorsed without recourse and given to the borrower upon satisfactory proof that the repairs or replacements have been made, or upon satisfactory assurance that the work will be performed.

(ii) When (A) the essential buildings are not to be repaired or replaced and other suitable buildings are not to be erected, or (B) a balance remains after all repairs, replacements, and other authorized disbursements have been made, such insurance funds will be applied on prior liens or as an extra payment to the borrower's loan accounts secured by the real estate or disposed of in accordance with the general principles applicable to the use of proceeds from the sale of a part of the security contained in applicable security servicing regulations for the type loan involved.

(iii) An insurance payment for loss or damage to a nonessential building the borrower voluntarily insured and as (A) applied on prior liens or to current delinquencies to FmHA or as an extra payment on the borrower's loan accounts secured by real estate; (B) disposed of as authorized by the State Director in accordance with the general principles applicable to the use of proceeds from the sale of a part of the security contained in applicable security servicing regulations for the type loan involved; or (C) used for other purposes as authorized by the State Director if the loan is adequately secured and the loan account is current.

(iii) When the indebtedness secured by the insured property has been paid in full or the draft is in payment for loss of property on which the FmHA has no claim, a loss draft which includes the FmHA as a joint payee may be endorsed without recourse and delivered to the borrower.

(d) *Loss drafts when loan is secured by other than first mortgage*—(1) When the loss draft does not include the interest of a prior mortgagee, it will be processed as provided in paragraph (c) of this section.

(2) When the loss draft includes the interest of a prior mortgagee, the County Supervisor is authorized to endorse and process the draft as follows:

(i) When the prior mortgagee will permit the use of such loss funds to repair or replace the damaged building, the draft may be endorsed without recourse upon satisfactory proof that the repairs or replacements have been made or upon satisfactory assurance that the work will be performed.

(ii) When the amount of the draft does not exceed the amount of the indebtedness then secured by the prior mortgage as stated in writing by the holder of the prior mortgage, and the holder of the prior mortgage has agreed in a written statement to the County Supervisor that he will apply such funds as a payment on the borrower's prior mortgage indebtedness, the draft may be endorsed without recourse.

(iii) When the amount of the draft exceeds the amount of the indebtedness then secured by the prior mortgage, as stated in writing by the holder, and he has agreed in writing to pay such indebtedness from the loss funds, the draft will be endorsed without recourse only after all parties named as payees in the draft have signed an agreement to deliver the draft "in escrow" to a bank acceptable to the named parties. The agreement will specify the manner in which the funds will be disbursed by the bank, as escrow agent, to the several mortgagees named in the draft. After the loss funds have been collected by the bank, it will issue cashier's checks in the manner described in the escrow agreement (see Exhibit A for suggested form). If this procedure is found to be impractical in an individual instance, the State Director may authorize an alternative method for disbursing the loss funds to protect the Government's financial interest.

(iv) Drafts which have been endorsed by all other payees will be endorsed immediately without recourse. Such drafts or other loss funds will be processed in accordance with the methods described in paragraph (c) of this section.

(e) *Servicing insurance losses under special circumstances*—(1) *Foreclosures and voluntary conveyances.* Losses on properties in process of foreclosure or voluntary conveyance will be handled with the advice of the OGC. If the necessary cooperation of the borrower cannot be obtained, the State Director, with the advice of the OGC, will determine the proper action to be taken. To the extent feasible from a legal and practical standpoint, all loss payments should be received for a damaged or destroyed building and applied on the borrower's real estate indebtedness before title to the property is taken by the Government through foreclosure sale, voluntary conveyance, or otherwise, unless absolute assignment has been made by the borrower to the Government of all loss funds due from the insurance company.

(2) *Subrogation agreements.* When a company claims nonliability to the borrower and subrogation to the rights of the FmHA, the County Supervisor will forward a full report of the facts in the case to the State Director. The State Director will, upon advice from OGC, instruct the County Supervisor regarding further action to be taken.

(f) *Repairs and replacements.* When any loss payments have been deposited in a supervised bank account, all repairs and replacements done by or under the direction of the borrower, or by contract, will be planned, performed, inspected, and paid for in the same manner as improvements financed with loan funds.

(g) *Completing adjustment.* The borrower must complete the adjustment of the loss with the company or its authorized representatives. The County Supervisor, upon request of the borrower may consult with the borrower regarding the loss adjustment, but will not enter into negotiations with insurance adjusters or company representatives relative to the adjustment or settlement of losses on borrower property, or make any commitments, or sign any forms in connection with the adjustment of the loss. The FmHA will not waive any rights which it may have against the company except when the borrower's account or the FmHA claim has been paid-in-full.

(1) The County Supervisor will maintain a proper followup on all losses until satisfactory settlement has been made by the company.

(2) Where the County Supervisor has evidence that the adjustment agreed to by the borrower is significantly less than the amount of damage to which the borrower is entitled under the terms of the policy, the loss draft accompanied by a report will be sent to the State Director so that he may reopen the adjustment, if he considers it is in the interest of the FmHA to do so.

(3) When it appears evident that the amount of the loss is $1,000 or less, the County Supervisor may rely on estimates of contractors, building supply firms, reliable carpenters, or other evidence rather than personal inspection in determining whether the adjustment is equitable and the Government's interest is protected.

(h) *Reinstatement after loss.* In cases where insurance in the amount of the loss is not reinstated automatically by the provisions of the policy, it will be the responsibility of the County Supervisor to have the borrower reinstate as much of the insurance as may be necessary to fulfill the requirements of the FmHA.

(i) *Losses not covered by insurance.* When a loss occurs and insurance is not in force, the County Supervisor will:

(1) Inform the borrower that he has violated the security instrument by not providing insurance coverage and that it is his responsibility to make the needed replacements or repairs.

(2) If the borrower is unable or unwilling to make needed repairs or replacements from his own resources, the County Supervisor will submit complete information to the FmHA official authorized to determine whether FmHA will or will not continue with the loan. The County Supervisor's report will include recommendations on the following items:

(i) The advisability and possibility of making a subsequent loan to pay for needed repairs.

(ii) Subordination of the FmHA real estate lien to permit the borrower to obtain funds for needed repairs from another source.

(iii) The possibility of the borrower obtaining funds secured by a junior lien from another source.

(iv) Whether an advance is needed to protect the Government's interest in the property.

(3) If the loan will not be continued with the borrower, it must be serviced in accordance with the applicable instructions.

(4) If the borrower has improperly disposed of loss proceeds, the County Supervisor will refer the case with complete information and recommendations to the State Director. The State Director will consult the Regional Attorney when necessary and advise the County Supervisor as to appropriate servicing actions.

[41 FR 34571, Aug. 16, 1976, as amended at 50 FR 39638, Sept. 30, 1985]

§ 1806.6 Failure of borrower to provide insurance.

When a borrower fails to provide and maintain acceptable property insurance, the County Supervisor will immediately make every effort to have the borrower provide with his own funds a policy acceptable to the

FmHA. The County Supervisor will emphasize the borrower's responsibility to continue to provide and maintain proper insurance and that failure to do so is grounds for foreclosure. If a FP or section 502 RH borrower still fails to provide acceptable insurance, the County Supervisor will process a SF 1034 to pay for insurance in accordance with provisions of this paragraph, only in cases where unusual and severe hazard exists such as recurring forest fires or unstable ground conditions. Failure to provide insurance is a nonmonetary default and will be a consideration in determining if the loan is to be continued with the borrower. The advice of the State Director will be obtained before foreclosure action is started. If a borrower indebted for any other type loan fails to provide acceptable insurance, the County Supervisor will take the following action:

(a) *Expired policies.* (1) The County Supervisor will request the insurance agency or broker who issued the expired policy to issue a new policy which is acceptable to the FmHA.

(i) The new policy will be effective as of the date of the County Supervisor's contact with the insurance agency or broker or as soon thereafter as possible, and will be for a term of one year. If State insurance regulations require a longer term, the State Director will issue a State Instruction authorizing County Supervisors to obtain policies for the minimum period permitted by State insurance regulations.

(ii) The FmHA will be shown in the loss payable clause and in the mortgage clause in the proper order of priority.

(iii) Insurance coverage on each building usually will be the same as shown on the expired policy if it meets or exceeds FmHA requirements. If the coverage shown on the expired policy does not meet FmHA requirements, proper coverage will be obtained.

(iv) The County Supervisor will, if possible, have an automatic renewal provision included in the policy.

(v) If the borrower refuses to pay the insurance premium with his own funds or arrange with the agent for subsequent payment by premium note or otherwise, the County Supervisor, will prepare and process Standard Form 1034 in accordance with FmHA Instruction 322.1 (which is available at any FmHA office), to cover the amount of the insurance premium. The amount of the premium payment will be charged to the borrower's FmHA account with the highest lien priority as a recoverable cost item.

(vi) If the insurance agency or broker who issued the expired policy refuses to issue a new policy, the County Supervisor will have the borrower designate in writing another insurance agency or broker from whom the insurance can be obtained.

(vii) After the County Supervisor and the borrower exhaust all efforts to obtain acceptable insurance, the County Supervisor will request advice from the State Office as to companies issuing acceptable policies in the State and from which the borrower might be able to obtain an acceptable policy. If the borrower still cannot obtain an acceptable policy from any such company, and the determination has been made to continue with the borrower, the County Supervisor will temporarily accept from the borrower the available insurance policy the FmHA determines most nearly conforms to the requirements of § 1806.2 of this subpart.

(A) In making this determination, the following deficiencies become more objectionable in the order from (*1*) to (*5*) paragraphs (a)(1)(vii)(A) of this section:

(*1*) A policy written for an initial term of less than one year.

(*2*) A policy which will insure the most essential buildings but will not cover all essential buildings.

(*3*) A policy which covers major risks such as fire and lightning, but does not include one or more of the other risks specified in § 1806.2(8).

(*4*) A policy for a lesser amount of insurance than is required by § 1806.3.

(*5*) A policy that is issued by a company which is not licensed to do business in the State or otherwise does not meet the requirements of § 1806.3.

(B) Whenever adequate insurance becomes available, the County Supervisor will require the borrower to deliver to the County Office an acceptable insurance policy. The temporary policy will be returned to the borrower for cancellation after all losses claimed under the policy have been settled.

(C) If the borrower is unable to furnish a property insurance policy of any kind, he is still responsible for the debt in the event of loss.

(D) If the County Supervisor accepts an inadequate insurance policy under these conditions or the borrower fails to furnish any insurance policy, the County Supervisor will include in his report to the State Director an explanation of the efforts he and the borrower made to obtain acceptable insurance and his justification for accepting an inadequate policy, or for not obtaining an insurance policy of any kind.

(b) *Insurance canceled for reasons other than nonpayment of insurance premium.* (1) The County Supervisor, immediately upon receipt of a 10-day notice of cancellation for a policy, will urge the borrower to provide acceptable insurance.

(2) If the borrower fails to provide acceptable insurance before the cancellation is effective, the County Supervisor will contact the insurance agency or broker who issued the insurance policy to determine the reasons for cancellation and, if possible, have the policy reinstated.

(3) If the insurance company will not reinstate the policy, the County Supervisor will attempt to obtain an acceptable insurance policy from another agency or broker in accordance with the provisions of paragraph (a) of this section.

(c) *Insurance canceled for nonpayment of premium.* (1) The County Supervisor, immediately upon receiving a 10-day cancellation notice for a policy, will, if possible, contact the borrower in an effort to have him pay the insurance premium from his own funds or arrange with the agent for subsequent payment by premium note, or otherwise.

(2) If the borrower does not pay or arrange to pay the premium before the policy cancellation is effective, the County Supervisor will, before the cancellation becomes effective, notify the insurance company or broker by certified mail (return receipt requested), that the FmHA as mortgagee (or trustee) will pay the premium for one year to continue the policy in effect for that period. The County Supervisor will then prepare and process Standard Form 1034 to cover the amount of the premium for a period of one year. The amount of the premium will be charged to the borrower's loan account as a recoverable cost item.

(3) If a property insurance mortgage clause other than Form FmHA 426-2 is used in connection with the policy and the insurance company or broker refuses to accept payment from the FmHA in this manner to reinstate or continue the policy, the County Supervisor will attempt to obtain an acceptable insurance policy from another insurance company or broker in accordance with the provisions of paragraph (a) of this section.

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegation of authority by Director OEO 29 FR 14764, 33 FR 9850)

[41 FR 34571, Aug. 16, 1976, as amended at 42 FR 33263, June 30, 1977; 43 FR 34430, Aug. 4, 1978; 50 FR 39638, Sept. 30, 1985]

EXHIBIT A—ESCROW AGREEMENT REAL PROPERTY INSURANCE

Date ————————————————
(Name of bank) – ————————————
(City or town) ——————————————
(State) ————————————————

Gentlemen: Attached is Draft No. ———, for $———, issued by the ————Insurance Company in payment of ———loss which damage the buildings on the farm of ————————, of ————————County, State of ————————.

This draft has been endorsed by the undersigned payees who request that you collect these funds and issue cashier's checks to the following payees for the following amounts:

————————, First Mortgage $———
————————, Second Mortgage $———
————————, Third Mortgage $———

The balance only, if any, will be paid to ———————, the owner of the property.

———————
First Mortgagee

———————
Second Mortgagee

———————
Third Mortgagee

———————
Owner

EXHIBIT B—FORM FmHA 426-4—NOTICE OF EXPIRATION OF INSURANCE (FP AND SECTION 502 RH BORROWERS)

This will advise that the property insurance coverage on your dwelling and other essential buildings will lapse on ——— (date).

Although the Farmers Home Administration (FmHA) no longer requires that your original policy or other evidence of insurance be retained in your county office file, this does not in any way lessen your responsibility to the Government.

The real estate mortgage or deed of trust you signed at the time the loan was made required that you continually maintain property insurance in amounts and on terms and conditions satisfactory to the FmHA until the loan is repaid. Failure to provide acceptable insurance and list FmHA on the policy as mortgagee violates a condition in the security instrument you signed when you received your loan and may result in the FmHA taking action to protect its interest in your property.

COUNTY SUPERVISOR.

[41 FR 49991, Nov. 12, 1976]

Subpart B—National Flood Insurance

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 40 U.S.C. 442; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 38 FR 14944 (7 CFR 2.23); delegation of authority by the Asst. Sec. for Rural Development, 38 FR 14944, 14952 (7 CFR 2.70).

SOURCE: 39 FR 17093, May 13, 1974, unless otherwise noted.

§ 1806.21 General.

(a) *Authority.* This subpart prescribes the policies and procedures to be followed in implementing the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973. The provisions of these Acts are applicable to Farmers Home Administration (FmHA) authorities permitting financing of buildings of any type now located in or to be located in special flood or mudslide prone areas as designated by the Federal Insurance Administration (FIA) of the Department of Housing and Urban Development (HUD), and any machinery, equipment, fixtures and furnishings contained or to be contained therein.

(b) *Background.* The Congress has found that annual losses throughout the nation caused by floods and mudslides are increasing at an alarming rate, largely as a result of the accelerated development and concentration of populations in areas subject to floods and mudslides. The availability of Federal funds in the form of loans, grants, guarantees, insurance and other forms of financial assistance are often determining factors in the utilization of land and the location and construction of industrial, commercial and residential facilities.

(c) *Scope.* The National Flood Insurance Program (the program) was authorized and created because the private insurance industry has been unable to provide insurance coverage at reasonable prices for such natural disasters as floods and mudslides. Subsidized and affordable insurance has been made available under the Act through an agreement between the Federal Insurance Administration and the National Flood Insurers Association.

§ 1806.22 Areas of responsibility.

(a) *Federal Insurance Administration (FIA).* (1) Identify and publish information with respect to all areas in the country which are subject to floods and mudslides and designate those areas on Flood Hazard Boundary maps.

(2) Notify affected communities of their designations and encourage them to adopt and enforce land use and other control measures and to adopt ordinances or laws which will regulate and control construction in areas designated as having special flood or mudslide hazards.

(3) Make flood insurance available at reasonable rates in sufficient amounts, within the statutory limits, to adequately protect owners against loss to their buildings and contents when those buildings are located in or will be located in designated special flood and mudslide prone areas in communities participating in the National Flood Insurance Program.

(b) *Farmers Home Administration.* The State Director, after being notified by the FmHA National Office or FIA of designated flood or mudslide hazard areas and receiving flood hazard boundary maps identifying the hazard areas, FIA insurance rate charts, or other information concerning the program, will inform the appropriate County Supervisors and provide them the maps, rate charts, and other relevant information concerning the program in areas they serve. Permanent records indicating the date a community was notified as containing identified flood hazard areas, communities participating in the program, and communities eligible to participate but not participating in the program will be maintained in the State Office. County Supervisors will notify, in writing, those borrowers whose insurable buildings are located in designated flood or mudslide hazard areas of the availability of national flood insurance and encourage them to obtain flood insurance to protect their and the Government's financial interest.

(c) *Community.* Communities are required to participate in the National Flood Insurance Program within 1 year after notification of its formal identification as a community containing one or more special flood and mudslide prone areas, or by July 1, 1975, whichever is later, or be denied Federal financial assistance or Federally-related financial assistance for acquisition or construction purposes in such areas. Communities wishing to qualify for the program may submit a completed application to: Administrator, Federal Insurance Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

(d) *Lender.* The lender must determine whether real property is located in an area identified as having special flood or mudslide hazards and cannot discharge the responsibility merely by obtaining a self-certification from the applicant that the property is not located in an area having special flood hazards.

§ 1806.23 Definitions.

For the purpose of this subpart, the following definitions apply:

(a) Financial assistance means any form of direct, insured or guaranteed loan, including reamortization and assumption on new terms of any loan, any form of grant, or other form of direct or indirect assistance extended by the FmHA.

(b) Financial assistance for acquisition or construction purposes means any form of Federal financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, or substantial improvement of any building and for any machinery, equipment, fixtures and furnishings contained or to be contained in such buildings.

(c) Community means any state or political subdivision thereof, such as county, parish, township, city or other local government which has zoning and building code jurisdiction over a particular area having special flood hazards.

(d) Eligible community means a community in which the Administrator of FIA has authorized the sale of flood insurance under the program.

(e) Designated special flood or mudslide prone area means those areas in a community subject to flood or mudslide which have been identified by flood hazard boundary maps or those areas not identified by maps but where, due to emergency, the FIA Administrator has authorized the sale of flood insurance.

(f) Flood means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of streams, rivers, or other inland water, the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels, or abnormally high tidal water or rising coastal waters resulting from severe storms, hurricanes, or tidal waves resulting from volcanic eruptions or earthquakes.

(g) Mudslide or mudflow means a major occurrence involving the appearance of a large river or flow of "liquid mud" down a hillside, usually as a result of earlier brushfires followed by heavy rains over a widespread area.

(h) Flood insurance means insurance coverage for floods and/or mudslides under the program or otherwise acceptable to FIA.

(i) Building means any walled and roofed structure, other than a gas or liquid tank, that is principally above ground and affixed to a permanent site. Residential and most types of industrial, commercial, and agricultural buildings, such as lumber sheds, machinery storage sheds, grain storage bins, and silos, are included in this definition.

(j) Substantial improvement means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the actual cash value of the structure either before the improvement is started or, if the structure has been damaged and is being restored, before the damage occurred.

§ 1806.24 Eligibility.

In addition to an applicant meeting the requirements for the type of financial assistance requested, the following requirements for eligibility of applicants for financial assistance for acquisition and construction purposes in designated special flood and mudslide prone areas must be met:

(a) If flood insurance is available, to be eligible after March 1, 1974, the applicant must have purchased a flood insurance policy at the time the loan or grant is closed.

(b) Applicants will not receive financial assistance in those communities that have been notified as having special flood and mudslide prone areas and where flood insurance is not available within 1 year after such notification or by July 1, 1975, whichever is later.

§ 1806.25 Conditions.

FmHA financial assistance may be extended to eligible applicants meeting the eligibility requirements of § 1806.24 of this subpart, provided the following conditions are also met:

(a) *Dwelling and multi-unit housing facilities.* (1) If the financial assistance is to buy a dwelling or multi-unit housing facility:

(i) The first floor elevation of the habitable space of the dwelling or housing unit must be above the 100-year flood level.

(ii) The housing must be served by public utilities and facilities, such as sewer, gas, electrical and water systems that are located and constructed to minimize or eliminate flood damage, or have an onsite water supply system and waste disposal system located so as to avoid impairment of such systems and contamination from the waste disposal system to the water supply system from flooding.

(2) If the financial assistance is to build or provide substantial improvement, the requirements of paragraph (a)(1) of this section must be met and all construction must meet requirements of the applicable minimum property standards.

(i) A building permit must be issued by the appropriate governing officials having jurisdiction in the area and compliance must be had with the zoning code or other established legal requirements of the area for reducing or eliminating flood or mudslide damage.

(ii) The structure must be designed and anchored to prevent flotation, collapse or lateral movement of the structure.

(iii) Construction materials and utility equipment that are resistant to flood damage must be used.

(iv) Construction methods and practices that will minimize flood damage must be followed.

(3) If the financial assistance is to make minor repairs, the conditions of paragraphs (a)(1) (i) and (ii) and (2) (i), (ii) and (iii) of this section must be met or the building must have existed on the site prior to the date the area was identified as having special flood

or mudslide hazards and the loan approval official must determine that the dwelling is suitable as a residence.

(4) When applications for financial assistance are received in areas identified as having special flood and mudslide hazards, the loan approval official will consider the expected severity and frequency of floods and mudslides in determining whether any housing loans should be made in the area. He should be sure, if loans are made, that the objectives of the loans can be accomplished and the Government's financial interest will be adequately protected.

(b) *Nonresidential buildings.* Construction plans and specifications for new buildings or improvements to existing buildings must comply with flood plain area management or control laws, regulations or ordinances.

(c) *Flood insurance coverage.* (1) Any property on which flood insurance is required must be covered by such insurance during its anticipated economic and useful life in an amount at least equal to its development or replacement cost (except estimated land cost), or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Program, whichever is less. However, if the financial assistance provided is in the form of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

(2) The contents of a building must be insured separately from a building but coverage cannot be written on the contents of a three-walled machinery shed or similar type open building.

(3) Flood insurance shall not be required on any state owned property that is covered under an adequate state policy of self-insurance satisfactory to the Secretary of HUD, who will publish a list of states with such policies.

§ 1806.26 Coverage and premium rates.

Exhibit A sets forth limits of coverage and chargeable premium rates under the program. Insurance policies under the program can be obtained from any licensed property insurance agent or broker serving the eligible community or from the National Flood Insurers Association Serving Company (Serving Company) for the state. The Servicing Company for each state is shown in Exhibit B.

§ 1806.27 Acceptable policies and servicing.

The general acceptance of policies and servicing of insurance will be performed in accordance with Subpart A of this part. Any unusual situations that may arise with respect to obtaining or servicing flood insurance should be referred to the State Director. The State Director will attempt to resolve any problems concerning the flood insurance program in the state with the Servicing Company. Flood hazard boundary maps, insurance rate tables, the insurability of specific structures, and other information concerning the program may be obtained from the Servicing Company. Difficulties in administering the program which the State Director is unable to resolve should be referred to the National Office for Assistance.

EXHIBIT A—COVERAGE AND PREMIUM RATES

1. The following table sets forth the limits of coverage available under the program:

Type of structure	Structure coverage		Contents of coverage [4]	
	Subsidized	Total [3]	Subsidized	Total [3]
Single family, residential [1]	$35,000	$70,000	$10,000	$20,000
All other, residential [1]	100,000	200,000	10,000	20,000
All nonresidential [2]	100,000	200,000	100,000	200,000

[1] For Alaska, Hawaii, and the Virgin Islands, the following limits of coverage apply: Structure coverage for one family residential is $50,000 subsidized and $100,000 total coverage, and structure coverage for other residential is $150,000 subsidized and $300,000 total coverage.

[2] Includes hotels and motels with normal occupancy of less than 6 months.

[3] Coverage in amounts exceeding the subsidized limits is available only after an actuarial cost has been established and flood insurance rate may be issued.

[4] Contents of a building must be insured separately from the building. However, coverage is applicable to contents only while in an enclosed building. Therefore, coverage cannot be written on the contents of a three-walled machinery shed or a similar type open building.

2. The following table sets forth the applicable premium rates:

Type of structure	Rates per $100 of coverage (subsidized only)	
	Structures	Contents
All residential	[1]$0.25	$0.35
All nonresidential	[1]40	75

[1] Actuarial (nonsubsidized) rates are applicable to any structure, the construction or substantial improvement of which started after Dec. 31, 1974, or the date on which the initial rate map was issued, whichever is later, in identified areas having special flood or mudslide hazards.

EXHIBIT B—SERVICING COMPANY

The servicing company office to be contacted for information relative to the availability of coverage under the national flood insurance program, flood hazard boundary maps, insurance rate tables, and related material.

E.D.S. Federal Corporation, National Flood Insurance, P.O. Box 34294, Bethesda, Md. 20034, phone toll-free 800-638-6620; commercial phone 301-898-5900.

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

[43 FR 18538, May 1, 1978]

PART 1807—TITLE CLEARANCE AND LOAN CLOSING

Sec.
1807.1 General.
1807.2 Initial loan cases.
1807.3 Office of the General Counsel—Initial loan case.
1807.4 Subsequent loans not in connection with transfers or credit sales.
1807.5 Additional requirements in connection with loans to homestead entrymen, contract purchasers of farm units from the Bureau of Reclamation, and certain Indians.
1807.6 Cancellation of loan.

AUTHORITY: Secs. 307, 339, 75 Stat. 308, 318, secs. 502, 510, 63 Stat. 433, as amended, 437, sec. 4, 64 Stat. 100; 7 U.S.C. 1927, 1989, 42 U.S.C. 1472, 1480, 40 U.S.C. 442; Orders of Sec. of Agr., 19 FR 74, 26 FR 8403, 27 FR 5005, 9957, unless otherwise noted.

SOURCE: 31 FR 14123, Nov. 4, 1966, unless otherwise noted.

§ 1807.1 General.

(a) *Farm ownership, rural housing, and individual soil and water conservation loans.* This part contains the title clearance and loan closing authorities, policies, and procedures for all Farm Ownership, Rural Housing, and Individual Soil and Water Conservation loans, except loans in connection with transfers and assumption agreements or credit sales by the Farmers Home Administration.

(b) *Other types of loans and transactions.* Title clearance and closing of all other loans and transactions involving real estate security will be handled as provided in regulations applicable thereto.

(c) *Definition of terms.* As used in this part "title clearance" includes title examination and title insurance; "mortgage" includes deed of trust and deed to secure debt; "borrower" means the loan applicant; "title insurance company" includes its local representatives, agents, and attorneys; and "Farmers Home Administration" refers to the United States of America acting through the Farmers Home Administration. Also, a loan is considered to be closed when the mortgage is filed for record.

(d) *Methods of title clearance and closing of transactions.* Title clearance and loan or transfer closing will be handled by title insurance companies approved by the State Director and/or attorneys designated by the State Director with the exception of Rural Rental Housing (RRH) loans to profit, limited profit, and nonprofit organizations who may use their own attorney in accordance with the requirements of § 1944.236(a) of Subpart E of Part 1944 of this chapter. When private attorneys are to be used in connection with obtaining title insurance, the State Director may, by a State Supplement, require such services to be performed by designated attorneys if that is acceptable to the title insurance company(s). When the services are available from more than one source, the borrower or seller, or both; or the transferor or transferee, or both; will choose the source to be used.

(1) The services of the Office of the General Counsel (OGC) will be used in any county or area where the State Director is unable to obtain the services of a designated attorney or a title insurance company, or a combination of both; any exceptional or complex case or situation in which the State

Director determines, with the advice of OGC that it would be more reasonable or practical to use OGC's services; in any case involving a mortgage on a leasehold; and in all credit sales with or without a subsequent loan or transfer.

(i) When OGC services are to be used on a county or area basis, the State Director, with the advice of OGC, will determine whether the title clearance and closing of the transaction will be accomplished with the assistance of a local attorney, a title insurance company representative or combination thereof, or other method. After such a determination has been made, the State Supplement will specify the county or area involved and the method to be used.

(ii) When OGC services are to be used in an exceptional or complex case or situation, title clearance will be handled in the manner in which OGC determines most appropriate.

(e) *Approval of attorneys.* The State Director is responsible for approving loan closing attorneys within his jurisdiction without any discrimination whatsoever. Any attorney who wishes to be approved should apply to the State Director on Form FmHA 427-14, "Agreement to Provide Loan Closing Services." This form must be properly completed and executed. The State Director will approve any qualified attorney who applies provided the attorney complies with the bonding and insurance requirements prescribed in § 1890t.2, (a)(1) (i) and (iv) of this chapter. This approval will be for the county or area in which the attorney can provide the legal services required of the attorney by this Instruction. Only in a rare case will there be less than two attorneys designated in a county. The State Director, at his discretion may consult with the Office of the General Counsel and/or the local or State bar association as to the professional qualifications of a proposed designated attorney. In addition, a borrower, who prior to application for a loan has retained an attorney, may request that the attorney be approved for his loan. Such approval will be given for closing that particular loan by the County Supervisor if the attorney has the required bonding and insurance and to the best of the County Supervisor's knowledge the attorney is in good standing with the bar association. Subpart E of Part 1924 of this chapter provides the method by which attorneys may be debarred.

(f) *Approval of title insurance companies.* The State Director will approve any company issuing satisfactory title insurance policies, licensed to do business in the state, which has or will agree or states in writing (by exchange of letters, publication of services, or otherwise) that it can validly and will furnish for a stated charge, a title insurance binder, a mortgagee or joint protection title insurance policy (hereinafter referred to as "mortgagee title policy"), and all of the related services prescribed herein, provided:

(1) The mortgagee title policy will be in such form and will contain only such standard types of exceptions as are approved in advance by the State Director with the advice of the Office of the General Counsel.

(2) The title insurance company understands that the request for insurance and services will be made by sellers or borrowers and that no cost of insurance or services will be charged to or paid by the Farmers Home Administration on an insured lender.

(3) The title insurance company representative who supervises the closing is authorized to receive, and give receipts for, the company's charges.

(g) *Costs of title clearance and loan closing.* Neither the Farmers Home Administration nor an insured lender will be responsible for any costs of title clearance or loan closing. The costs of title clearance and loan closing will include any costs of abstracts of title, land surveys, attorney's services, title insurance, obtaining curative material, notary fees, documentary stamps, recordation costs, and other expenses necessary to make the loan. The borrower or the seller, or both will be responsible for payment of all costs of title clearance and loan closing and will arrange before the loan is closed for such payment. In cases involving the purchase of land, the option should contain their agreement.

(h) *County Supervisor's responsibilities.* The County Supervisor will: (1) Provide the borrower, and seller if land is being acquired, with the name and address of the designated attorney and approved title insurance companies.

(2) Furnish to the selected designated attorney or title insurance company on Form FmHA-826 or FmHA 427-4, "Transmittal of Title Information," all the information and documents called for therein concerning the loan to be made or insured, including any waivers, easements, and so forth, and Farmers Home Administration forms or other documents necessary to effect title clearance and loan closing.

(i) *Ordering title examination or insurance.* Application for title clearance and loan closing services will be made by the borrower or the seller, or both, to a insurance company selected by the loan applicant or seller, or both. Application for title insurance will be made on forms furnished by the company and will request issuance of a form of mortgagee title policy approved by the State Director in an amount at least equal to the amount of the loan. The borrower also may obtain an owner's policy or a combination policy if he desires. The mortgagee named in the policy will be the "United States of America," except that if a direct loan is being made with State Rural Rehabilitation Corporation trust funds, the name of the mortgagee will be "United States of America, Trustee of the assets of (name of State Rural Rehabilitation Corporation)." The borrower will instruct the designated attorney or title insurance company to deliver the preliminary title opinion or title binder to the County Supervisor.

(j) *Settlement statement.* Form FmHA 440.59 (HUD-1), "Settlement Statement," will be used as the statement of closing costs for all loans and credit sales subject to the provisions of § 1940.406(c) of this chapter.

[31 FR 14123, Nov. 4, 1966, as amended at 41 FR 16159, Apr. 16, 1976; 41 FR 24110, June 15, 1976; 42 FR 42843, Aug. 25, 1977; 48 FR 4, Jan. 3, 1983; 50 FR 8583, Mar. 4, 1985]

§ 1807.2 Initial loan cases.

(a) *Services.* Title clearance and loan closing services to be provided by designated attorneys and title insurance companies will include examining title; preparing, obtaining, or approving simple curative material, conveyances, and security instruments; advising borrowers, and sellers if land is being acquired, regarding the adequacy of the legal description of the farm; issuing either preliminary and final title opinions or certificates of title, or title insurance binders and mortgagee title policies; and performing other legal services necessary to close the loan properly. The designated attorney or title insurance company will advise the County Supervisor upon his request, as to the nature and legal effect of outstanding interests or title defects to assist him in determining whether such outstanding interests or defects affect the value of the farm or its operation and which must be corrected in order for the Government to obtain from the borrower a lien of the required priority upon a title merchantable in fact. The designated attorney or title insurance company will be expected to perform these services with diligence and dispatch so that the loan can be closed without unnecessary delay.

(b) *Examination of title.* At the proper time, the County Supervisor will notify the borrower, and seller if land is being acquired, that they should employ the designated attorney or title insurance company to examine title and perform the other legal services in connection with title clearance and loan closing, and that they should furnish to the designated attorney or title insurance company any needed abstracts of title or other title evidence for use to the extent possible to reduce the cost to the borrower.

(1) *Scope of search.* The designated attorney or title insurance company will determine whether there are any judgments or pending suits in State or Federal courts, Federal or State tax claims (including taxes which under State law may become a lien superior to a previously attaching mortgage lien), or bankruptcy, insolvency, or

probate proceedings, involving any part of the farm, whether already owned by the borrower or to be acquired with loan funds, or involving the borrower, or the vendor in a land acquisition case which would prevent the Farmers Home Administration from obtaining an enforceable mortgage lien of the required priority. Title examination upon which this determination will be based will include such searches of the records, or certificates from the clerks, of the appropriate United States district courts as may be necessary in the particular State.

(2) *Period of search.* When title insurance is obtained, title examination will cover such period of time as the title insurance company determines necessary in order to insure the Farmers Home Administration mortgagee interest in the title. In other cases the title search must cover the shortest period necessary to include one of the following:

(i) A warranty deed from a party other than the United States which has been of record for at least 40 years.

(ii) A Farm Ownership, Farm Housing, or individual Soil and Water Conservation (not Water Facilities) security instrument.

(iii) A patent or deed from the United States, except that where such patent or deed recorded within 40 years was issued under the Federal homestead or reclamation laws or where title is held under but a patent or deed has not been issued under such laws, the search must cover either 40 years or the period necessary to include the entry or purchase contract whichever is shorter.

(c) *Preliminary title opinion or title insurance binder.* When the services of a designated attorney are used, he will issue his preliminary title opinion to the County Supervisor. The preliminary title opinion will be on Form FmHA-312 or FmHA 427-9, "Preliminary Title Opinion," or if that form is not legally sufficient in a particular State, the State Director with the advice of the Office of the General Counsel, may approve a satisfactory State form. When title insurance is obtained, the title insurance company will furnish the County Supervisor a title insurance binder disclosing the defects in and encumbrances against the title, the conditions to be met to make the title insurable, and the curative or other actions to be taken before loan closing. The binder also will include a commitment to issue an approved mortgagee title policy in an amount at least equal to the amount of the loan.

(d) *Title exceptions.* Upon receipt of the preliminary title opinion or title insurance binder, the County Supervisor will:

(1) Check the opinion or binder carefully to see that it is complete in all respects. If any required information is omitted or if the standard form of opinion or binder is amended, the County Supervisor will not accept the opinion or binder but will return it for completion or correction. If the designated attorney or title insurance company is unable or unwilling to complete or correct it, the County Supervisor will send it with a full explanation to the Office of the General Counsel, which may approve or disapprove it.

(2) Determine that the legal description covers all the property rights, including water rights, intended to be taken as security and whether the opinion or binder shows exceptions, reservations, encumbrances, or defects which must be corrected, eliminated, or waived. The County Supervisor will consult with the designated attorney, title insurance company, or the State Director when he needs advice in making these determinations.

(3) Waive any exceptions which he or the State Director determines will not affect adversely the suitability, security value, or successful operation of the farm.

(4) Submit any exceptions which will affect adversely the title to the farm or its suitability, security value, or successful operation to the State Director. The State Director may waive them conditionally. If necessary, the County Committee will reconsider the suitability of the farm for a loan and prepare a new certification. If it is favorable and the conditions imposed in the State Director's waiver can be met, the County Supervisor will inform the

designated attorney or title insurance company.

(e) *Preparation of deeds, mortgages, and curative instruments.* The designated attorney or title insurance company will prepare or approve deeds, mortgages, affidavits, releases, and other simple curative documents necessary for title clearance and loan closing. Farmers Home Administration mortgage forms will be used in all cases and other Farmers Home Administration forms, whenever possible.

(1) *Types of estates—joint tenancy, entirety, or other.* (i) Where land is acquired with loan funds and the State law permits, both the title to the land being acquired and the title to any part of the farm already owned will be vested in the borrower and spouse with right of survivorship, or at the election of the borrower as community property in a State having community property laws under which all community property goes to the surviving spouse when the other spouse dies without disposing of his or her share by will, subject to the following exceptions:

(*a*) Upon written request of the borrower in any case in any State, title may be vested in any way which will permit obtaining the required mortgage lien.

(*b*) When one spouse is under disability of minority or mental incompetency and it is necessary under State law in order for the Farmers Home Administration to obtain a valid lien not subject to disaffirmance and enforceable against the security property including all interests therein required to be mortgaged title will be vested in the eligible spouse only.

(*c*) When the eligible spouse is a citizen and the other spouse is a noncitizen, title will be vested only in the citizen, if possible under State law.

(ii) In all other cases title may be held in any manner which will permit obtaining the required mortgage, except that paragraph (e)(1)(i)(*c*) of this section will apply in noncitizen cases.

(2) *Preparation of deeds.* Deeds will be prepared as follows:

(i) Except for conveyances from the United States and subject to the following additional exceptions, conveyance of title to borrowers must be by general warranty deed. The usual and appropriate form of deed may be accepted from fiduciary or straw parties. Upon the prior approval of the Administrator in any case where the seller refuses to give a general warranty deed, a quitclaim or special warranty deed may be accepted if the title it conveys is approved by the Office of the General Counsel as free from substantial objections. If the grantors or their predecessors in title acquired the property by conveyance from the Farmers Home Administration or one of its predecessor agencies, a special warranty deed may be used warranting against title defects arising subsequent to that conveyance.

(ii) The deed should show the exceptions, reservations, liens, and other encumbrances subject to which the loan is being made. Where customary, the legal description of the land should include a provision further identifying the security as that described in an earlier conveyance identified by date, parties, and recording data.

(iii) Each deed should recite a legal consideration.

(3) *Preparation of mortgage.* The designated attorney or title insurance company will obtain from the County Supervisor the proper type of Farmers Home Administration mortgage form, which will be prepared as follows:

(i) *Forms.* Form FmHA-127.——, or FmHA 427-2 (State) will be used for all direct loans. Form FmHA-177.——, or FmHA 427-1 (State) will be used for all insured loans. Form FmHA-157 or FmHA 427-3 (State) Rider will be used as attachment to Form FmHA-127.—— or FmHA 427-2 (State) or FmHA-177.——or FmHA 427-1 (State) when a loan is made to a homestead entryman or to a contract purchaser of a farm unit from the Bureau of Reclamation.

(ii) *Number of copies.* Ordinarily it will only be necessary to prepare the original and one copy of the mortgage, the original to be recorded in the public records and then retained in the Farmers Home Administration County Office and the copy to be delivered to the borrower. An additional copy will be necessary in States where the original is retained by the recorder. Additional copies also will be necessary in some cases in which the interests of other parties are involved. The County Supervisor will conform the needed copies and distribute them to the proper parties at the time of loan closing or as soon as possible thereafter.

(iii) *Persons required to execute mortgage.* The mortgage will be executed by the borrower and all other persons having interests in the farm which are required in each case to be mortgaged. Persons required to sign the mortgage should use exactly the same names in which they hold title, and each person who signs the promissory note and the mortgage should sign both with exactly the same name.

(iv) *Title exceptions.* The mortgage must describe specifically by reference or other method sufficient under State law, the exceptions, reservations, liens, and other encumbrances subject to which the loan is being made, except that any exceptions and reservations so numerous or with descriptions so lengthy as to increase substantially legal or recording costs, may be described by use of a general statement similar to the following: "Subject, however, to all valid outstanding easements, rights-of-way, mineral leases, mineral reservations, and mineral conveyances of record."

(v) *Releasing or retaining existing mortgages in refinancing cases.* If any outstanding Farmers Home Administration real estate loan is not being refinanced, the mortgage with respect thereto will not be superseded or released; the mortgage, the note therein secured or described, and any related mortgagee title policy will remain in force. When there is an outstanding Farmers Home Administration direct or insured real estate mortgage against the property and the loan which the mortgage secures is being refinanced with the current loan, the mortgage for the loan being refinanced will be superseded and will be released at the time of loan closing, unless it is legally necessary to keep the existing mortgage in effect in order to have a valid lien.

(vi) *Notes to be described in mortgages.* (*a*) In the case of an insured loan, only the note evidencing the insured loan being made will be described in the mortgage, and under no circumstances will a direct note and an insured note be described in one mortgage. If, at the time an insured loan is being made, any other kind of loan (whether insured or direct) is being made simultaneously or additional security is desired for a loan already outstanding, it will be necessary to take a separate mortgage on the form appropriate for the other loan.

(*b*) When a direct loan is being made, the note will be described in the mortgage. When two or more direct loans are made to the same borrower on the same security and closed simultaneously, only one mortgage will be taken and the notes for all such loans will be described in the mortgage. Notes evidencing existing direct loans to borrowers receiving a new direct loan will also be described in the new mortgage unless prohibited by Farmers Home Administration regulations or policies or deemed by the loan official inadvisable in the particular case. When a subsequent direct Farm Ownership, Rural Housing, or Soil and Water Conservation loan is being made without refinancing the initial loan, the initial loan and subsequent loan notes will be described in the mortgage, except that, where a subsequent loan mortgage is being taken without covering additional land, and describing the initial loan note would result in a higher title insurance premium for the subsequent loan, the State Director may allow the subsequent mortgage to additionally secure the initial loan by cross-reference to be inserted in the mortgage rather than by description of the initial loan note; a mortgage taken from a transferee will describe the assumption agreement executed by the transferee instead of the earlier related note as the instrument secured, and the term "note" is to be interpreted accordingly in this Part 1807 of this chapter.

(*c*) For a direct Farm Ownership or a Farm Housing loan, the "Due date of final installment" to be shown in the mortgage, and for an insured Farm Ownership loan, the date to be inserted in "the final installment being due on ——————, 19—," is determined by adding the number of years over which the loan is payable to the date of the promissory note. For all other direct loans and for insured Soil and Water Conservation loans, it is the final installment date shown on the promissory note.

(vii) *Alteration of mortgage form.* A mortgage form may be altered by deletion, revision, or addition pursuant to authorization by the State Director or in a special case where it is necessary in order to comply with the terms of loan approval prescribed in accordance with pertinent Farmers Home Administration regulations. No other alterations in the printed mortgage forms may be made without prior approval of the National Office.

(f) *Loan closing.* The designated attorney or the title insurance company will arrange with the County Supervisor, the borrower, the seller if land is being acquired, and other necessary parties for the time and place of loan closing. The designated attorney or the title insurance company will assist with the loan closing to determine that the Farmers Home Administration obtains a valid mortgage lien on the property of the priority required by the Farmers Home Administration, subject only to such other encumbrances, reservations, and exceptions as have been permitted by the County Supervisor or the State Director. Where a second mortgage Farm Ownership loan is being made simultaneously with another Farmers Home Administration loan (both subject to a prior lien), the other Farmers Home Administration loan will be deemed secured by a third lien.

(1) *Disbursement of loan funds.* Loan funds will not be disbursed prior to filing of the mortgage for record. However, when necessary, loan funds may be placed in escrow before the mortgage is filed for record for disbursement after it is filed. Loan funds for the payment of a lien may be disbursed only upon receipt of a discharge, satisfaction, or release (or assignment where necessary to protect the interest of the Government), except that funds may be disbursed, after the mortgage is filed for record, to a reputable lienholder in reliance on his written agreement to deliver the instrument upon receipt of a specified sum.

(2) *Title examination and liens or claims against borrowers.* The designated attorney or title insurance company will examine the title and will check for liens or claims against the borrower from the terminal date of the preliminary title examination to and including the time of recording the current mortgage. If there are no entries of record during the period except the documents required in connection with title clearance and any partial releases or subordinations previously approved by the Farmers Home Administration, the loan may be closed. If there are any other entries of record during this period, the loan will not be closed until such entries have been cleared of record, or administratively waived if appropriate. The designated attorney or title insurance company should advise the County Supervisor of the nature of such intervening instruments, the legal method by which they may be eliminated, and the effect they may have on obtaining a valid mortgage of the priority required.

(3) *Taxes and assessments.* The designated attorney or title insurance company will ascertain that all taxes and assessments against the property which are due and payable are paid at or before the time of loan closing. Certificates or receipts should be produced from the taxing authorities to show that taxes or assessments which are due and payable have been paid and, if possible, such certificates or receipts should be kept in the borrower's County Office loan docket with the other loan papers. Where the seller and the borrower have agreed to prorate taxes or assessments which are not yet due and payable for the year in which the loan closing takes place, the seller will pay his portion at the time of loan closing. If the taxes and assessments cannot be paid at the time of loan closing, the amount of taxes and assessments to be paid by the seller will be deducted from the selling price of the land.

(4) *Prior lienholder's agreements.* If other persons hold liens, purchase contracts, or other security interests, herein called liens, which will remain against the property as a prior lien after the loan is closed, it may be nec-

essary for them to limit their rights thereunder in certain cases.

(i) Forbearance agreements will be obtained where the County Supervisor determines that protection of the Government's interest requires the prior lienholder to agree to one or more of the following:

(*a*) Not to declare his lien in default or accelerate the indebtedness thereunder for a specified period without the written consent of the State Director.

(*b*) Not to make advances for purposes other than taxes, insurance, or payments on other prior liens when his lien secures future advances which the designated attorney, title insurance company, or Office of the General Counsel determines would, under State law, have priority over the mortgage being taken or any mortgage already held or insured by the Farmers Home Administration.

(*c*) To consent to the Farmers Home Administration's making the loan and taking the mortgage, if the prior lien prohibits such loan or mortgage without consent.

(*d*) Not to enforce without the written consent of the State Director as long as the Farmers Home Administration has an interest in the property, any unsatisfactory payment terms or other specified provisions of the prior lien which in the opinion of the County Supervisor would endanger the security position of the Farmers Home Administration.

(ii) Notice of foreclosure or assignment agreements will be obtained in those states whose laws permit junior liens of private parties to be extinguished by foreclosure of a prior lien without the junior lienholders being made parties or being given actual notice.

(iii) In a State in which forbearance agreements only are needed, they will be obtained on Form FmHA-446 or FmHA 427-8, "Agreement with Prior Lienholder," or, if that form is not legally satisfactory for use in a particular State, on another form approved by the Farmers Home Administration. When only notices of foreclosure or assignment are required, a separate form for such purpose will be used. When both forbearance agreements and notices of foreclosure or assignment are required, Form FmHA-446 or FmHA 427-8 may be amended in order to serve both purposes or a substitute form approved by the Farmers Home Administration may be used for both purposes, or Form FmHA-446 or FmHA 427-8 may be used and the notice agreement obtained on a separate form approved by the Farmers Home Administration.

(iv) When a forbearance or notice agreement is required, the designated attorney or title insurance company will determine at the time of loan closing that it is properly completed and executed and, if required by State law, sealed and witnessed; also, that it is properly acknowledged by the prior lienholder and recorded, if recording is required by the Farmers Home Administration.

(5) *Affidavit of sellers.* If land is being acquired, the designated attorney or title insurance company may require that an affidavit of sellers be properly completed and executed at, or shortly prior to, the time of loan closing. This affidavit may be on Form FmHA-875 or FmHA 427-6, "Affidavit of Sellers," or if that is not legally sufficient in a particular State, a substitute form approved by the Farmers Home Administration may be used. The affidavit will not be recorded unless State law permits and the designated attorney or title insurance company considers it necessary.

(6) *Deeds and curative material.* The designated attorney or title insurance company will determine that deeds, releases, and curative material are properly completed, executed (sealed and witnessed if required by State law), acknowledged, and filed for record at the proper time.

(7) *Promissory note.* The designated attorney or title insurance company representative will determine that the promissory note (or assumption agreement) is properly completed and executed. Only the applicant(s) is required to sign the promissory note if a sound loan can be made based on his/her income and financial resources alone. If the applicant(s) does not have sufficient repayment ability, then a co-owner(s) providing the needed repayment ability will sign the

note. If the co-owner(s) occupying the RH building are unable to provide the needed repayment ability for an RH loan, then a cosigner (individual or corporation) will sign the note (or assumption agreement). Any other signatures on the note (or assumption agreement) needed to insure the required security, as provided in the State Supplements, will be obtained. Persons having a disability of minority or mental incompetency, or noncitizens in an FO case, are not to execute the promissory note. In all cases the purpose and effect of signing a promissory note, assumption, or other evidence of indebtedness for loans made or insured by FmHA is to engage separate and individual personal liability, regardless of any State law to the contrary. The date shown on the note will be the date it is executed by the borrower which may not be later than the date the mortgage is filled for record.

(8) *Assignment of future income.* If Form FmHA-253 or FmHA 443-16, "Assignment of Income from Real Estate Security," is required in a particular case, the County Supervisor will prepare the form and have it available for execution by the borrowers at the time of loan closing. The designated attorney or title insurance company will see that the form is properly completed, executed (sealed and witnessed if required by State law), and acknowledged by the borrowers.

(9) *Mortgage.* The designated attorney or title insurance company will see that the mortgage is properly completed, executed, sealed and witnessed if required by State law, acknowledged, and filed for record. The mortgage will be executed and dated the date of the note, except that if that is impossible for one or more of the signers of the mortgage, it may be executed on a different date but not before the date of the note.

(10 *Affidavit of borrowers.* The designated attorney or title insurance company may require that an affidavit of borrowers be properly completed and executed at the time of loan closing. This affidavit may be on Form FmHA 427-5, "Affidavit of Borrowers," or if that is not legally sufficient in a particular State, on another form approved by the Farmers Home Administration. Statements in the form should be modified as necessary to make them factually correct. The affidavit will not be acknowledged and recorded unless State law permits and the designated attorney or title insurance company considers it necessary.

(11) *Other services of designated attorneys and title insurance companies.* The designated attorney or title insurance company will assist and advise the County Supervisor, when necessary, in the preparation, completion, obtaining execution, acknowledgment, recordation, and so forth, of documents required in particular cases. Standard FmHA forms will be used for such purposes whenever possible. The designated attorney or title insurance company will maintain close communication with, and keep the County Supervisor advised, as to the progress of the title clearance and preparation of loan closing material.

(12) *Final opinion or mortgagee title policy*—(i) *Final opinion.* As soon as possible after loan closing, the designated attorney will issue his final opinion to the County Supervisor. The final opinion will be on Form FmHA-313 or FmHA 427-10, "Final Title Opinion," or if that form is not legally sufficient in a particular State, on another form approved by the Farmers Home Administration. Since issuance of final opinion will not be held up pending return of recorded instruments, it may not be possible for the final title opinion to show full recording information in all cases, but it should at least show the time of filing, filing number, and as much other recording information as is available. Attached to the final opinion will be all required documents then available, including any which the County Supervisor had furnished to the designated attorney and were not previously returned. With the approval of the designated attorney, arrangements may be made with the recorder to forward or deliver instruments to the proper parties after recordation.

(ii) *Mortgagee title policy.* As soon as possible after loan closing the title insurance company will issue to the County Supervisor the mortgagee title policy in favor of the Government as it appears as mortgagee. The policy shall be subject only to approved standard exceptions and such outstanding encumbrances, exceptions, and reservations as were waived administratively in writing by the Farmers Home Administration.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10 Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

[31 FR 14123, Nov. 4, 1966, as amended at 43 FR 7967, Feb. 27, 1978; 50 FR 8583, Mar. 4, 1985]

§ 1807.3 Office of the General Counsel—Initial loan case.

In any county, area, or case in which the services of the Office of the General Counsel are to be used, the title clearance and loan closing will be accomplished in accordance with the provisions of § 1807.2 of this part and closing instructions issued by that Office. As soon as the loan has been closed, a local attorney or title insurance company representative and the County Supervisor will initial or certify the original of the closing instructions to show that the requirements thereof have been met.

§ 1807.4 Subsequent loans not in connection with transfers or credit sales.

Title clearance and closing of subsequent loans to which this part is applicable will be handled as follows:

(a) *By designated attorney or Office of the General Counsel.* Title clearance and loan closing will be the same as provided for in §§ 1807.2 and 1807.3 of this part, respectively, with respect to initial loans, except that a preliminary title opinion will not be required on land already owned by the borrower and mortgaged to the Farmers Home Administration for a Farm Ownership, Farm Housing, or Soil and Water Conservation (not Water Facilities) loan. The final title opinion on such land will cover the period subsequent to recordation of the initial loan mortgage. If title clearance is to be handled by the Office of the General Counsel, the County Supervisor will also forward the initial loan mortgage to the Office of the General Counsel.

(b) *With title insurance.* Title clearance and loan closing with title insurance will be the same as provided for in § 1807.2 of this part with respect to initial loans except that:

(1) Title insurance will be obtained only when additional land is being acquired or the initial loan is being refinanced with the subsequent loan. If the same title insurance company is being used as the one which issued title insurance in connection with the initial loan, it should only be necessary to examine title to the land already owned by the borrower from the time of issuance of the existing mortgagee title policy.

(2) Regardless of whether the initial loan is being refinanced, the new mortgagee title policy will cover the entire farm including the land already owned and any land being acquired.

(3) If the initial loan is being refinanced, the new mortgagee title policy will cover the entire amount of the subsequent loan, including the amount of the initial loan being refinanced. But, if the initial loan is not being refinanced, the new mortgagee title policy will insure only the amount of the subsequent loan.

§ 1807.5 Additional requirements in connection with loans to homestead entrymen, contract purchasers of farm units from the Bureau of Reclamation and certain Indians.

Whenever loans are made subject to agreements with other Government agencies, the title clearance and loan closing requirements of special instructions with respect thereto, as well as those of this part, will be applicable.

§ 1807.6 Cancellation of loan.

If for any reason it is determined that the loan cannot be made, the County Supervisor will promptly notify the borrower and those who are involved in the particular case at the time the determination is made, such as sellers (if land is being acquired), designated attorney, other local attorney, Office of the General Counsel, and title insurance company or its local representative.

PART 1809—APPRAISALS

Subpart A—Appraisal of Farms and Leasehold Interests

Sec.

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Subpart A—Appraisal of Farms and Leasehold Interests

AUTHORITIES: Sec. 339, 75 Stat. 318; 7 U.S.C. 1989; sec. 510, 63 Stat. 437; 42 U.S.C. 1480; sec. 4, 64 Stat. 100; 40 U.S.C. 442; Order of Acting Secretary of Agriculture, 36 FR 21529; Order of Assistant Secretary of Agriculture for Rural Development and Conservation, 36 FR 21529, unless otherwise noted.

SOURCE: 37 FR 13791, June 14, 1972, unless otherwise noted.

§ 1809.1 General.

This subpart prescribes the policies and procedures for appraisal of farms securing farm ownership (FO) loans, soil and water (SW) loans to individuals, recreation (RL) loans, land conservation and development (LCD) loans, labor housing (LH), and rural housing (RH) loans other than nonfarm tracts or small farms. All farms, except small farms appraised for RH loans, will be appraised for their normal value under this subpart. The normal agricultural value and normal market value of farms will be considered in arriving at the normal value.

(a) *Definition of appraisal.* An appraisal is a determination of value based on facts which have been judiciously interpreted to arrive at a sound conclusion about the property. It is a written statement which identifies the property, adequately describes it and expresses an opinion as to its value. The dependability of the opinion is based on the thoroughness and accuracy with which facts are gathered and examined as well as the skill and experience of the person who interprets them. The appraiser finds value based on facts but does not create it.

(b) *Appraisal reports.* Form FmHA 422-1, "Appraisal Report (Farm Tract)," and Form FmHA 422-3, "Map of Property," will be used in recording appraisals except as modified by Subpart A of Part 1941, Subparts A, B, and C of Part 1943, and Subpart D of Part 1945 of this chapter. When applicable, Form FmHA 422-2, "Supplemental Report (Irrigation, Drainage, Levee, and Minerals)," will be prepared in conjunction with an appraisal. In no case will Form FmHA 1922-8, "Residential Appraisal Report," be used to appraise a farm under this subpart.

(c) *Administrative responsibility.* The State Director will authorize qualified county employees to make appraisals under this subpart. Employees must be given intensive appraisal training to establish an acceptable level of competence before they are granted authorization to make appraisals. Job descriptions for these employees will include appraisal duties. Exceptions to this policy must have prior approval of the Administrator.

(1) The State Director will designate qualified members of his State Office staff only to provide appraisal training.

(d) *Real estate improvements to be considered.* Appraisals will be based on the farm as developed. Appraisals will reflect value of existing improvements and those included in the development plan.

(7 U.S.C. 1989; 5 U.S.C. 301; Sec. 10, Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Secy. of Agriculture, 7 CFR 2.23; delegation of authority by the Asst. Secy. for Rural Development, 7 CFR 2.70)

[37 FR 13791, June 14, 1972, as amended at 42 FR 31762, June 23, 1977; 42 FR 44669, Sept. 6, 1977; 44 FR 1701, Jan. 8, 1979; 46 FR 28331, May 26, 1981; 48 FR 10294, Mar. 11, 1983; 48 FR 52565, Nov. 21, 1983]

§ 1809.2 Definition of values.

There are different kinds of values used in farm appraisals which must be considered in arriving at the recommended normal value for farm properties.

(a) *Normal value.* This value is the amount a typical informed purchaser would be willing to pay under normal conditions and justified in paying for the property as improved for farming purposes, home advantages, and other assets the property may have. This assumes that the purchaser is a willing and informed but not anxious buyer, and the seller is a willing and informed but not a forced seller. Unless there are unusual developments in the area that have affected the value of the property, or that will affect it in the future, normal conditions may be assumed to have been reflected in the sales price of comparable farms in the area during the most recent 3-year period. The appraiser will recommend a normal value for all farm property being appraised. In making appraisals on farms he will consider the normal agricultural value, the normal market value, and the present market value of the property in arriving at the normal value.

(b) *Normal agricultural value.* The normal agricultural value of a farm is the amount a typical purchaser would, under usual conditions, be willing to pay and be justified in paying for the farm, as improved, for customary agricultural uses, including farm-home advantages, with the expectation of receiving normal net earnings from the farm. This value is based upon agricultural assets only and assumes an informed typical purchaser.

(1) The amount the purchaser would be justified in paying for a farm for farming purposes depends in a large measure on the earning ability of the farm.

(i) In determining the earning ability of a farm, the appraiser will assume that:

(*a*) The farm will be operated by a typical operator for the area.

(*b*) The cropping system used is typical for the farm under consideration and will maintain the anticipated productivity. In determining the proper cropping system, the appraiser will take into account acreage allotments for the basic crops.

(*c*) Crop yields used for the farm under consideration are representative of yields generally being obtained in the area.

(*d*) Approved commodity prices and farm expenses are employed in estimating net income.

(*e*) The property will be improved as shown in Form FmHA 424-1, "Development Plan."

(*f*) The share of normal farm operating expenses, the cost of necessary farm repairs and replacements customarily paid by the landowner will be deducted from his share of income in determining net rental farm income.

(2) The appraiser will also consider the value of the farm as a home and will take this into account along with the amount that could safely be invested in the farm, based on the capitalization of the net rental farm income in arriving at its normal agricultural value.

(c) *Normal market value.* The normal market value is the amount for which a property would sell with reasonable effort under normal conditions. It is a value which recognizes nonagricultural as well as agricultural assets, and is predicated on the long-term balance between buyers and sellers. It is the amount that a typical purchaser would be willing to pay and be justified in paying for the farm as improved.

(1) In determining the recommended normal market value of a farm, the appraiser will consider:

(i) The net rental share income based on normal prices and costs.

(ii) Improvements shown on the farm development plan.

(iii) Hazards and high-risk enterprises.

(iv) The location of the farm with respect to:

(*a*) Off-farm employment opportunities and dependability of such employment, and

(*b*) Community services such as schools, churches, markets, trading centers, and roads.

(v) The condition and suitability of buildings.

(vi) The condition and productivity of the land.

(vii) Assets such as timber, gravel, stone, or other proven minerals.

(viii) The desirability of the property as a home.

(ix) The quality and the stability of the surrounding community.

(x) The price at which comparable properties in the area have sold. These prices will be adjusted to normal market values.

(xi) The opinion of informed people who are familiar with real estate values in the area such as real estate brokers, private and cooperative lenders, and agricultural lenders.

(d) *Present market value.* The present market value is the amount a typical purchaser would be willing to pay and justified in paying for the property considering agricultural uses and nonagricultural assets the property may have. It is assumed that the property would sell for this amount with a reasonable sales effort and that the purchaser would be a willing but not anxious buyer, and the seller would be a willing but not forced seller.

(1) In determining the present market value, the appraiser will consider the same factors described in paragraph (c) of this section and § 1809.4 as they apply to present conditions rather than normal conditions. Present market value determination will be made for the acquisition of individual tracts or security servicing for the following:

(i) Security servicing actions required by Part 1872, Subpart A of this chapter.

(ii) Rural renewal loans.

(iii) Emergency loans.

(iv) Resource conservation and development loans.

(v) Community services loans and grants.

(vi) Cooperative association loans.

(vii) Timber development loans. (Appalachian Region only.)

§ 1809.3 Basic farm valuation principles.

Some of the more important principles and factors affecting value that should be considered in making farm appraisals are discussed as follows:

(a) *Fundamental assumptions.* The following is a summary of the assumptions an appraiser must make in the appraisal of farm property:

(1) The farm will be operated by a typical operator.

(2) The farm will be developed as planned.

(3) The crop yields are based on current practices and present farm technological methods in general use.

(4) General economic conditions will remain stable.

(b) *Location and state of development*—(1) *Value of property is affected by location in several ways.* (i) The distance to market and trading centers in which applicant will conduct his business.

(ii) Distance to the county seat or principal trading center and to the dominant city.

(iii) Kind and condition of roads to market.

(iv) Availability of competitive markets.

(v) Accessibility of the property such as convenience to schools, churches, and to main highways; potential for recreational developments, availability and costs of utilities, including domestic water.

(vi) Location value is difficult to measure on the basis of a formula. It can be established by analysis of sales data. When location causes the property to have more value than justified on the basis of customary agricultural use, the appraiser should determine and include what he estimates the better features to be worth to a typical buyer.

(2) *State of development considerations.* Appraisers should carefully study a community to note the quality of farming, the standard of building maintenance, and similar economic patterns. Another important factor in location is the opportunity for off-farm employment in business or industrial areas within reasonable proximity of the property being appraised. The affect on value of the availability of rented land as a normal situation should be considered in making farm appraisals.

(c) *Home desirability.* This is an important factor in farm appraisals since the farm business provides an operator with an occupation and a home. An appraiser should consider those features which relate to family living and the satisfaction of a comfortable home. An appraiser should base his opinion on how he believes the various home features of a farm will appeal to a typical purchaser. Home use advantages have a bearing on the kind of typical buyer or operator attracted to the farm under consideration. This will affect the quality of management which will be assumed by the appraiser. The basic elements considered for home use value are the house and yard, location, all weather accessibility, water and other utilities, neighborhood, churches, schools, and recreational and scenic features. Properties with antiquated, poorly arranged and obsolete buildings will have less value than improved properties.

(d) *Earning power of the farm.* The net earnings of a farm is the result of a number of factors working together. These include the kind of crops grown, acreage, yields, soil types, the type and efficiency of the operation, markets and the normal prices of the products, and the cost of production, including fixed charges. Income as a factor in valuation must be based upon a typical operation. The valuation should not be influenced by the present management, except to the extent it is expected to affect the future value of the property. A typical operator would be the most likely operator the farm would be expected to attract who would conduct a farming operation suited to the property. An appraiser should not assume practices which have become obsolete, but should be alert to changing types of production which may be altering the typical operation in the area. Yields should be estimates of the capability for the farm being appraised as operated by a typical farmer or rancher. This is the production level which can be assumed in the immediate future using current farm practices and present farm technology. Appraisers should avoid the fallacy of using average yields for wide areas instead of a yield level for the specific farm.

(e) *Hazards and detriments.* A hazard is a feature which affects farm value because it creates uncertainty in the farming operation. It causes loss or damage to property or its products at irregular intervals. Hazards include flooding, hail, tornado, insects, or disease. The frequency or regularity of hazards being encountered can best be judged by analyzing the occurrence and frequency of these factors over the last few years. The effectiveness of control measures to eliminate or reduce frequency of flooding hazards with dams, ditches, and dikes, will be recognized. A detriment is an everpresent handicap which regularly or permanently injuries the property. Detriments include weed infestations; irregular fields; highway and railroad right of ways which divide a farm; fumes, vapors, and smoke from factories. Rundown buildings, noncontiguous parcels of land, unsatisfactory building arrangements, or unattractive farm landscaping are also detriments.

(f) *Availability of other income.* The availability of employment or other sources of income including rented land, are important considerations in present-day farm appraisals. Real property values usually reflect availability of other sources of income in a community which adds to the flexibility and utility of farm property. Off-farm employment opportunities often available to typical operators during periods when they are not needed on their farms may enhance farm value. Recognition of dependable sources of off-farm employment and land for rent should be on a normal basis and reflect the long-time outlook for a farm.

§ 1809.4 The three-way approach to normal value.

Farm appraisals made under this subpart will be based to the extent applicable on a three-way approach, using market data of prices of comparable properties, capitalization, and summation of all resources and facilities. This combination will provide a means of arriving at a normal value for the full range of farm properties, which the Farmers Home Administration (FmHA) is now authorized to finance.

(a) *Market data approach.* Using the sale prices of comparable properties sold during the most recent 3-year period is a sound and acceptable means of arriving at normal value. The level of normal (LON) will be the average for such 3-year period unless otherwise authorized. The appraiser should observe, study, and record pertinent facts for as many sales of comparable property as possible. He should be certain the properties selected as comparable are so similar to the property being appraised that a prospective purchaser would likely pay an equivalent price for the farm. The objective is to deduce from sale data on comparable property the price which the property being appraised would attract on the market. If there is a lack of similarity between the property being appraised and the properties on which sales data is being used, appropriate compensating adjustments will have to be made. If the differences are numerous or pronounced, sales data on more nearly comparable property should be selected. Property selected for comparative purposes should include those in which the terms and conditions of the sale are representative of true sale transactions occurring in the community. Form FmHA 422-9, "Real Estate Sales Data," will be used to record sales information.

(1) Some family sales, certain contract sales, foreclosure, and purchase by uninformed or speculative buyers may not represent true sales transactions. These should be closely examined and only the true sales in this group used for comparison.

(i) The essential quality that should be considered in comparing sales of similar properties are: Location, soil, and topography, water resources, dwelling, other essential buildings, allotments, proportion of cropland to total land, farm layout and arrangement, general appearance, accessibility to services and facilities, state of cultivation, woodland, pasture, urban or rural orientation, and alternative uses.

(ii) Form FmHA 422-10, "Appraiser's Worksheet for Study of Comparable Properties," may be used on an optional basis since it provides a systematic method for considering quality points of comparison in analyzing the subject property in relation to properties sold on the market.

(b) *Capitalization approach.* An accurate estimate of earnings capitalized at an appropriate rate determines the earnings value. This value, generally known as capitalization value, is the amount that a prudent investor likely would pay for the property based on its future earnings and advantages. The capitalization rate to be used in evaluation is most important. State real estate staff members will assist County Supervisors in establishing capitalization rates by areas for various parts of the State.

(1) The following techniques can be used to find capitalization rates:

(i) Determine the rate of return received on comparable or nearly comparable properties or investments. When the sale price of a comparable farm has been determined and confirmed, the rate of return can be established by working an earnings statement for that farm. The net income thereby obtained will reflect the rate of return to the investment in the farm. If the exact annual income can be ascertained from the owner, a more precise capitalization rate can be determined. Several determinations in this manner can provide a good indication of a reliable capitalization rate for an area. An example of a technique for determining the capitalization rate for an area is available at all FmHA offices. The capitalization rate will be determined annually, at the same time the loan is determined.

(ii) Questioning selected informed farm purchasers will also usually reveal the return investors expect from farm property.

(2) The rental income method will be used and appropriate adjustments made for home use advantages and other agricultural features. Capitalization of the rental share will translate farm earnings for use of land and buildings into earnings value. This method will reflect one that a typical operator would adopt for the farm considering the development planned in Form FmHA 424-1. The rental income approach must be based on equitable rental terms. Studies of lease terms in each area are important to establish a fairly definite pattern of prevailing rental terms. When farm tenancy in a community is too low to determine typical rental terms, the appraiser can use rental terms for other comparable areas with similar properties in estimating returns for ownership of land and buildings.

(c) *Summation approach.* An indication of value under this approach is obtained by adding the value of essential buildings to the normal market value of the land. Depreciation must recognize functional and economic obsolescence as well as physical deterioration in determining building value. This approach is used for checking purposes in making the appraisal

(1) The normal market value of land will be the value of the land without buildings. It will include land development of a permanent nature. A value per acre for the land resources will be determined by analyzing the prices of comparable land for a normal period. Per acre values of land can also be determined by adjusting present market values to normal.

(2) The value of buildings to a farm will be determined by an analysis of the reproduction costs of modest and essential buildings and their overall attractiveness and functional utility. The following are some techniques that may be used to determine the value of buildings to a farm:

(i) The appraiser will estimate the remaining number of years of life in each building. He will also reduce the remaining period of years the building will be used when circumstances exist such as obsolescence due to undesirable design or arrangement, insect infestation, lack of utility or flexibility. The estimated remaining life of buildings will also be adjusted for superior or inadequate maintenance. The method to be used in determining a percentage figure is as follows:

(*a*) Based on the above consideration, the appraiser will estimate in years the original life of each essential building, and estimate the number of years of useful life remaining for each essential building.

(*b*) He will then divide the number of years determined as the original life into the number of years he has decided would be remaining as each building's useful life.

(For example, if the appraiser determines a building has 20 years of useful life remaining and it has a total original life of 50 years, it has 40 percent useful life remaining. (20 years divided by 50 years.) The construction costs of a new, modest, and adequate essential building can then be multiplied by this percentage figure as a means of determining the value of the building to the farm.)

(ii) Nonessential and extremely old buildings may have insurance value but would not add to overall building value. Such buildings would not likely be replaced and therefore would not add value to the farm.

(iii) Dwellings should receive separate consideration in establishing value of improvements to a farm since the action of buyers and sellers generally reflect added value for attractive and functional homes within certain limits.

(iv) Value attributable to buildings will need to reflect physical depreciation caused by use and by action of the elements, functional obsolescence caused by unserviceable or unattractive design and poor arrangements, and environmental obsolescence caused by nuisance creating surroundings. Visual appeal and arrangement of buildings have a bearing on value. The flexibility of buildings for alternative uses and their functional utility are important in determining value of buildings.

(v) Location of farm buildings for possible farm reorganization including potential service as a headquarters unit, accessibility to markets and potential residential value for off-farm employment will give added value to farm buildings.

(vi) The U.S. census reports and studies by other Government and private agencies provide information which can serve as a guide in determining value of buildings to a farm.

(3) Other assets should be recognized and reflected as a part of summation value. Minerals, lakes, streams, and rivers are feature items in this group which reflect value.

(d) *Normal value.* The appraiser will consider the results of these three approaches and make needed adjustments to these findings before reaching the final conclusion for his recommended normal value. His adjustments will usually be for unusual location and economic use features not otherwise recognized, and for home use features which contribute to family living satisfaction not previously reflected. After an indication of value reflected by each approach has been determined, the appraiser should re-examine his calculations and the adequacy of the data analyzed in each approach. He should give further consideration to the strong points and the weakness of each approach used. As a general rule the value indicated by the market data approach is the most reliable indicator of value.

(1) The final step is the correlation of the indications of value reflected by the three approaches. The appraiser will examine the spread between the minimum and maximum figures. He will determine which approach appears to be the most reliable answer to the appraisal problem. He will temper this determination of value by the degree of reliance to be placed on the other indication of value.

(e) *Recommended normal value.* The appraiser's conclusion using the three approaches is the recommended normal value recorded in Part 7 of Form FmHA 422-1.

§ 1809.5 Normal long-term prices and costs.

The normal price level for farm products and the related level of farm costs for use in making FA appraisals has been developed to reflect a level of value which will be representative of the normal agricultural value of farm property in the foreseeable future.

(a) *National prices and costs.* The national level of normal average commodity prices and costs has been established on the basis of the future economic outlook. It is based primarily on the average 1967-69 commodity prices and levels. It was assumed in establishing this national projected level of normal prices there would be government participation in commodity programs. These prices also take into consideration expected future trends and such factors as population trends, national per capita income, farm production, and farm exports. The national commodity prices schedule is available in all FmHA offices.

(b) *State prices and costs.* A State schedule of normal farm commodity prices and costs will be included in State requirements and submitted to the national office for prior approval. If significant price differences exist in marketing areas within a State, or if important grade or quality price differences exist, the State price schedule should reflect such differences.

(1) *Other appraisal data.* The State Director will also include other appraisal data pertinent to conditions within his State. It will include such factors as the recognized systems of farming, maintenance costs of improvements, depreciation rates for buildings, those cost items on which landlords typically share and any other items which will be helpful to the appraiser.

§ 1809.6 Making the appraisal.

The method of making an appraisal will vary under different circumstances but a systematic pattern for analyzing the property should be followed.

(a) *County Supervisor responsibilities.* The property which will serve as security for the loan will be appraised after the applicant has been found eligible and the farm and home plan indicates there is a good possibility a loan can be made. The following should be available to make the appraisal:

(1) A preliminary development plan to include building construction plans, land development, and estimates, when applicable.

(2) The legal description of the property to be appraised.

(3) Other information needed will include:

(i) A legible aerial photo or a map of the property.

(ii) Information regarding real estate taxes.

(iii) Basic crop allotments and any yields for farm if available.

(iv) Soil Conservation Service Soil Surveys, Land-Use Maps, and plans, if available.

(v) Crop Insurance Program information, such as crops insured and premium charges.

(4) An accumulative record of verified sales of a sufficient number of properties is needed by the appraiser for each area of the county to provide a sound basis for using the market-data approach. Such verified sales information will be recorded on Form FmHA 422-9.

(i) A sufficient number of real estate sales data cards will be fully completed to be able to make appraisals in all parts of the unit serviced by each County Office for various types of property. Complete sales information carefully analyzed and properly verified on a representative number of sales in each area is more valuable to an appraiser than a large number of unverified and unanalyzed sales. The number of good basic sales data cards should be gradually increased. These cards need to be amended to show any physical changes that have taken place since the date of the sale. The appraiser must analyze each property as it existed at the time of the sale. The reuse of recent sales information is usually considered most desirable. However, all sales data used will have to be adjusted to the LON for the most recent 3-year period. County staff members should continue to accumulate sales information in the regular course of business. They will learn about real estate sales during their regular field travel which can be verified and analyzed in more detail when needed at a later date. Form FmHA 422-9 can be prepared with whatever information is obtained during the initial contact with the source of such information. This will assure a continuous flow of current sales data after the system has been established without requiring a special project.

(ii) County Supervisors will furnish the State Office at the close of each calendar year, a list of bona fide farm sales showing the total sale price and total acres involved for each sale that has occurred during the calendar year. Guidelines will be furnished by the State Director concerning the number of such sales that need to be furnished. The LON for broad areas will then be determined for the calendar year by the State Director and his real estate loan staff. The adjustment factor for that year will be included in the State requirement by March 1 each year. Farm sales should be reported without regard to size of farm or whether they contain buildings. Sales information on farm property sold for housing developments near large cities, industrial parks, airfields, or similar purposes should not be included with sales data to establish a LON. It is important statistically for State staffs to have a sufficient number of sales transactions to establish a true LON. A large statistical sample will offset variances in the properties and should result in a reliable level for a broad area. Sales of farms in irrigated areas and dry land farms should be kept separate. Requirements prescribed by the State Director to provide a method for reflecting the adjustment factors will supplement guidelines issued by the national office.

(b) *Preparation for the appraisal.* Before going to the property to make a physical inspection, the appraiser will fully review all information provided and also obtain any additional information which he considers pertinent to the appraisal. This will include the location or description, the sales price, and the date of sale of comparable property that was sold recently which is located in the area of the property to be appraised. The appraisal should be delayed until a future time if weather or field conditions are such that an adequate and thorough inspection of the property cannot be made. Appraisals cannot always be made under ideal conditions; however, it is expected that appraisers will use good judgment in individual cases in determining that conditions are satisfactory for making a sound appraisal.

(c) *Developing general information.* (1) The appraiser should be familiar with the general area with respect to types of farming, crop yields, production methods, and markets. There are a number of sources in addition to personal observations from which information of this type can be obtained. The appraiser should have a good working relationship with local businessmen, other lenders and farmers in the area, representatives of other agricultural agencies operating in the area, and local farmers. These sources of information are familiar with local agricultural conditions and can provide a continuing source of helpful information. The appraiser should be familiar with the general characteristics of the soil types. If questions arise about technical types, he should obtain the advice of a qualified soil technician.

(2) The appraiser should become adequately familiar with the immediate neighborhood in which the farm being appraised is located. He should observe the surrounding area sufficiently to determine whether any favorable or unfavorable factors of the neighborhood have an effect on the value of the property. He should note such factors as the type of farming practiced, community development, and the type and care given to buildings and land in the immediate area. He should also observe the condition of roads, community services available and undesirable features, such as a poor location and other related community conditions.

(3) Before beginning his detailed examination of the property to be appraised, the appraiser should make a general reconnaissance of the area around the property. After obtaining general information about the community, he is in a position to begin his examination of the property. After the inspection of the property he should observe and analyze comparable farms in the area on which he has sales data noting differences and similarities of the properties as a basis for comparison.

(d) *Inspecting the property.* The first step in making an appraisal is to identify the property. Boundary lines should be checked for accuracy with the map or legal description. Minor discrepancies between the description and property lines can usually be reconciled sufficiently to continue the appraisal. If there are major discrepancies, boundary disputes, and so forth, the appraisal should not be completed until the correct description is obtained. This is especially important in farm appraisals where essential buildings or other improvements may be located close to property lines or in disputed areas.

(1) During the inspection of a farm, the appraiser should have a plat or a map made from an aerial photo showing the fields and their location indicating the approximate acreage in cultivation, pasture, timber, and wasteland. The map should be on a large enough scale to show the significant features of the farm. He should locate the farmstead on the map. Correct notations should also be made as to the topography, fence lines, water supplies, and any special features such as dams, gravel pits, or underpasses. All of this should be shown and identified on the map as to their proper location on the farm.

(2) The appraiser should also observe the type of farming being carried on by the present occupant and note crop yields, evidences indicating the potential of the farm, and any other indications which would show the productivity of the unit.

(3) The appraiser must be careful to avoid the mistake of permitting the management of the present operator of the property to influence his decision on value since the appraisal is made on a developed basis for a typical operator.

(e) *Evaluation of buildings.* The value of farm buildings is determined by careful examination of each building with appropriate consideration to replacement costs and the amount the buildings have depreciated in value. The replacement cost is the amount required to replace the existing building with an appropriate new one serving the same general use. Depreciation includes any loss in value of the building when compared with the replacement cost. Loss in value may also be due to obsolescence in buildings that are out of style, misplaced, or do not meet the usual standards in the area. Because of the wide differences that exist and the many factors involved in the evaluation of older type buildings, a comparison with the value standards of newer type buildings forms the most dependable basis for the appraisal. The appraiser is responsive for recording his evaluation of buildings for insurance purposes in column 12 of Part 2 of Form FmHA 422-7.

§ 1809.7 Loan to holders of leasehold interests.

When it appears a loan authorized on a leasehold interest can be made, an appraisal of the leasehold interest will be required. When making appraisals on a leasehold interest, the following guides will be used in determining the normal value of the leasehold interest.

(a) Study the provisions of the lease and make sure that such provisions are in accordance with FmHA policy with respect to mortgageability and unexpired time.

(b) If the unexpired time of the leasehold interest is for an assured period of 50 or more years, the normal values will be determined in the same manner as for a fee owner. However, the appraiser will check his recommended values by comparing them with the sales price of any comparable leaseholds in the area. If sales of comparable leasehold interests have been so infrequent in the area that such a comparison will not permit an adequate basis for establishing the normal value, the appraiser may use the annuity method described below in making a check of his recommended value.

(c) If the unexpired term of the leasehold interest is for an assured period of less than 50 years, the appraiser will recommend the normal value by a comparison of the leasehold interest being appraised with prices, adjusted to normal market values, that have been received for comparable leaseholds in the area. In this connection, consideration must be given to the residual value of any improvements to which the lessee will be entitled at the expiration of the lease. In areas where considerable demand for loans is expected, leaseholds sales data should be accumulated for appraisal purposes. If the appraiser concludes that comparable sales data does not fully support the value of the leasehold being appraised, he will use the annuity method as an additional check of his values.

(1) The annuity method is a means of calculating the value of the lease on the basis of the estimated future earnings of a leasehold interest for the lessee. This method involves a determination of the annual net farm income or net rental value, considering long-time prices and costs, that would accrue to a lessee after allowing for the annual payment to the lessor by the lessee. The amount remaining is the annual net return on the leasehold interest to the lessee. The value of the lease to the lessee is determined by multiplying the annual net return by the appropriate factor for the number of unexpired years of the lease and the private or cooperative interest rates prevailing in the area for long-term farm real estate loans. A schedule with the factors for 5 percent, 6 percent, and 7 percent from 1 to 50 years is available in all FmHA offices. The following examples will illustrate the annuity method of determining the value of a leasehold interest to the lessee.

(i) The annual net return to the leaseholder is $600. The lease has an unexpired term of 40 years. The factor for 40 years at 6 percent is 15.046. $600×15.046=$9,027, the normal value of the lease to the leaseholder.

(ii) The annual net return to the leaseholder is $500. The lease has an unexpired term of 20 years. The factor for 20 years at 6 percent is 11.470. $500×11.470=$5,735, the normal value of the lease to the leaseholder.

(2) In this case, the normal value of the lessee's interest will always be less than the normal value of the property appraised on a fee simply title basis.

§ 1809.8 Preparation of appraisal report.

Directions for completing Form FmHA 422-1 are available in all FmHA offices.

PART 1810—INTEREST RATES, TERMS, CONDITIONS, AND APPROVAL AUTHORITY

Subpart A—Interest Rates, Amortization, Annual Charge, and Fixed Period

Sec.
1810.1 Information concerning interest rates, amortization, annual charge, and fixed period.
1810.2 Adjustment of interest rates for certain loans involving use of or construction on prime or unique farmland.

Subpart A—Interest Rates, Amortization, Annual Charge, and Fixed Period

§ 1810.1 Information concerning interest rates, amortization, annual charge, and fixed period.

(a) Tables for computing the interest rates (including the annual charge rates and length of fixed period for initial repurchase agreement for insured loans), tables for use in determining the amounts of interest on loans at different rates, and tables providing factors in amortizing loans, may be obtained from any County or State Office of FmHA or from its National Office at 14th and Independence Avenue SW., Washington, D.C. 20250.

(b) In the event that the tables provided for in paragraph (a) of this section do not furnish adequate information, questions should be directed to the Director, Finance Office, Farmers Home Administration, 1520 Market Street, St. Louis, Mo. 63103.

(Sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Orders of the Sec. of Agr., 29 FR 16840, 32 FR 6650)

[35 FR 17243, Nov. 10, 1970]

§ 1810.2 Adjustment of interest rates for certain loans involving use of or construction on prime or unique farmland.

(a) For essential community facility loans, insured farm ownership loans for recreation or non-farm enterprises, insured farm operating loans for recreation enterprises, soil and water loans for recreation purposes, individual recreation loans, and insured business and industry loans, the interest rate will be increased by two per centum per annum if the project being financed will involve the use of, or construction on, prime or unique farmland. Prime or unique farmland is as defined in § 657.5 (a) and (b) of Title 7, Code of Federal Regulations (1980).

(b) The two per centum interest rate increase will not apply if the applicant/borrower is a public body or Indian tribe and has demonstrated to FmHA that there are no suitable options for locating the proposed essential community facility project on land that is not prime or unique farmland.

(c) For each essential community facility loan and insured business and industry loan the District Director, after consultation with the Soil Conservation Service (SCS), will determine whether the proposed project will involve the use of, or construction on, prime or unique farmland. For each insured farm ownership loan for a recreation or non-farm enterprise, insured farm operating loan for a recreation enterprise, soil and water loan for a recreational purpose, or individual recreation loan, the County Supervisor, after consultation with SCS, will determine whether the proposed project will involve the use of, or construction on, prime or unique farmland. The determination will be documented by FmHA and made a part of the official case file.

(7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70)

[46 FR 47763, Sept. 30, 1981]

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

PART 1822—RURAL HOUSING LOANS AND GRANTS

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Subpart B—Section 502 Rural Housing Weatherization Loans

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Exhibit C—Subordination by the Government for Use with Rural Housing Site Loans

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70

Subpart A—[Reserved]

Subpart B—Section 502 Rural Housing Weatherization Loans

Authority: 42 U.S.C. 1480; delegation of authority by the Secy. of Agriculture, 7 CFR 2.23; delegation of authority by the Asst. Secy. for Rural Development, 7 CFR 2.70.

Source: 42 FR 61243, Dec. 2, 1977, unless otherwise noted.

§ 1822.21 General.

This regulation provides policies and procedures and delegates the authority for processing and approving Section 502 Rural Housing Weatherization (RHW) loans made under Title V of the Housing Act of 1949, as amended. Public Utilities (utilities) are authorized herein to process and service Section 502 Rural Housing (RH) loans to utility consumers for weatherization purposes. Loans will be made in accordance with this regulation and §§ 1944.2(p), 1944.10 and 1944.26(g) of Part 1944 Subpart A. Sections 1944.5, 1944.6, 1944.8, 1944.9 and 1944.15 of Part 1944, Subpart A also are applicable to this regulation, except as modified herein or in Exhibit A.

[42 FR 61243, Dec. 2, 1977, as amended at 46 FR 61989, Dec. 21, 1981; 50 FR 39960, Oct. 1, 1985]

§ 1822.22 Objective.

The objective of the Farmers Home Administration (FmHA) in making Section 502 RHW loans is to assist rural homeowners in making improvements to their homes that will reduce energy consumption and provide a more comfortable living environment for their families. In the case of farmowners Section 502 RHW loans can be made to weatherize dwellings located on the farm and occupied by the tenant, sharecropper, farm manager, or farm laborers.

§ 1822.23 Cooperative agreement.

Exhibit A of this regulation is a Cooperative Agreement which sets forth the procedures and regulations for making and servicing Section 502 RHW loans to consumers served by participating utilities. The FmHA State Director is authorized to enter into a Cooperative Agreement with any public utility with headquarters located in his State. He will be responsible for providing sufficient training to ensure that all of the provisions of the agreement are understood and that the utility has the ability to make and service loans in the manner prescribed.

§ 1822.24 Loan approval authority.

The Director, Finance Office or his delegated representative is the authorized approval official for Section 502 RHW Loans. Loans will be approved based solely on information and certifications on the completed Form FmHA 444-20, "Application and Promissory Note for Rural Housing Weatherization." The certifications will be as follows:

(a) Applicant certifies: (1) That the applicant has an ownership interest in the housing to be weatherized and it is occupied by the applicant or is located on the applicant's farm and is occupied by a tenant, sharecropper, farm manager or farm laborer.

(2) The adjusted annual income of all adults residing with the applicant.

(3) That with the addition of the weatherization improvements, the housing being improved will provide decent, safe, and sanitary living conditions.

(4) The applicant will, at the request of the FmHA, proceed with diligence to refinance the indebtedness through cooperative or other responsible private credit sources whenever the FmHA determines that the applicant's circumstances and earning capacity are such that the applicant is able to do so upon reasonable terms and conditions, and that the occupancy of the housing will continue as provided in paragraph (a)(1) of this section.

(5) That the applicant has received Form FmHA 410-9, "Statement Required by the Privacy Act."

(6) That the applicant is unable to provide the weatherization improvement needed with the applicant's own resources and that the applicant is unable to secure the credit necessary for this purpose from other sources upon terms and conditions which the applicant can reasonably be expected to fulfill. The applicant certifies that the statements made in the application are true, complete and correct to the best of the applicant's knowledge and belief, and they are made in good faith to obtain a loan.

(b) The utility certifies: (1) The applicant's property is located in a rural ara as set forth in the Cooperative Agreement.

(2) The applicant has paid bills owed to the utility in a satisfactory manner.

(3) The information furnished by the applicant is correct to the best of the utility's knowledge.

(4) The weatherization work has been completed to the satisfaction of the applicant who has authorized payment.

(5) The required Truth in Lending Form and Privacy Act Form have been delivered to the applicant.

§ 1822.25 County Office responsibilities.

(a) *Loan making.* County Offices will not process or approve Section 502 RHW loans authorized by this regulation. However, applicants for weatherization loans who are not participating utility consumers or who do not appear to be eligible for an RHW loan will be referred to the FmHA. Their applications will be handled in accordance with Part 1944, Subpart A or

Part 1904, Subpart G of this chapter, as appropriate.

(b) *Loan servicing.* When a utility notifies the FmHA Finance Office that and RHW loan is 90 days delinquent and forwards the loan account records to the Finance Office, the loan will be assigned a County Office code, a case number, and loan number. Form FmHA 444-20 will be forwarded from the Finance Office through the State Office to the appropriate County Office for further servicing in accordance with the appropriate FmHA Regulation.

[42 FR 61243, Dec. 2, 1977, as amended at 46 FR 61989, Dec. 21, 1981]

§ 1822.26 State Director's responsibility.

In addition to the administrative policy matters covered in item (J) of the Cooperative Agreement, the State Director should request an additional allocation of loan funds if they are needed in his State(s). The State Director is responsible for seeing that his State's funding allocations are not exceeded, and that the utility is notified in the future of any interest rate, income limit, or other program changes. Also, the utilities are to be provided a copy of the National Register of Historic Places and its supplements so that the utility is able to notify the State Director before weatherization improvements are made to an historic building. The State Director must comply with the National Historic Preservation Act of 1966, as amended; and Executive Order 11593, including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800, as set forth in Part 1890r of this chapter.

EXHIBIT A—COOPERATIVE AGREEMENT BETWEEN ——— AND THE FARMERS HOME ADMINISTRATION

Purpose:

This Cooperative Agreement and attachments establish authorities and procedures whereby the ——————————(Name of Organization), ——————————(Address), ————————, (Phone No.), a ——————————— utility, (enter type of utility such as Rural Electric Co-op, Gas, Water, or Investor Owned Electric Company) hereinafter referred to at the "utility," will process and service Section 502 rural housing (RHW) loans, authorized under the Housing Act of 1949, to weatherize dwellings of its consumers. It is agreed that the utility will receive loan applications and process, close, and service loans as provided in this agreement. The Farmers Home Administration, hereinafter referred to as the "FmHA," will determine the eligibility of applicants for loans for authorized purposes, based upon certificates provided by the applicant and the utility and will approve the loans.

Effective date of this agreement. This agreement shall be effective on the date of the last signature hereto.

Duration of agreement. This agreement shall continue to be in effect until all loans made are collected by the utility or returned to the FmHA for servicing because of delinquency or other justified reasons.

Policies. The utility will inform its consumes that FmHA loans will be made available to eligible applicants through the utility. Loans will be made under the existing laws and regulations governing the FmHA and utility. Regulations and guidance for loan making and loan servicing are provided in this part of the agreement.

A. *Loan Eligibility.* Loans may be made to applicants who: 1. Have an ownership interest in the housing to be weatherized. The housing must either be occupied by the applicant or be located on the applicant's farm and occupied by his/her tenant, sharecropper, farm manager, or farm laborer. The Housing must be served by the utility and located in a rural area. A rural area is defined in 7 CFR 1944.10 and identified by the State Director pursuant to paragraph N, 1 of this agreement. The dwelling, after improvements are completed, must be adequate for the family needs and be decent, safe, and sanitary.

2. Have an income of not more than the maximum moderate-income limit for the area, as set forth in Exhibit C of Subpart A of Part 1944. For the purpose of this agreement, "income" is defined as the net business income plus gross income from all other sources planned to be received during the next 12 months by all adults who will occupy the applicant's home.

3. Are unable to pay for the needed improvements without a loan and are unable to obtain a loan from another source on terms they could reasonably expect to meet.

B. *Terms.* 1. The interest rate used will be the rate in effect for FmHA Section 502 RH loans on the date the application is submitted to the utility. The FmHA State Director will notify the utility of the interest rate to be charged.

2. The loan will not exceed $1,500 (except in Alaska not to exceed $3,000) and will be

evidenced by a promossory note on Form FmHA 444-20, "Application and Promissory Note for Rural Housing Weatherization Loan."

3. The term of the loan will not exceed 5 years. Shorter repayment periods are recommended for smaller loans.

C. *Loans Purposes.* Loan funds may be used to buy and install weatherproofing items such as insulation, siding, caulking material, and storm windows and doors. Loan funds of not more than $25 (except in Alaska, not to exceed $50) plus 1 percent of the cost of weatherization work may be used to pay for technical services such as determining the type and amount of weatherization improvements needed and obtaining cost estimates, or inspections made or arranged for by the utility to insure that weatherization improvements are properly completed.

D. *Minimum Standards.* Weatherization improvements must meet FmHA's minimum standards for existing housing (at this time, HUD MPS 4900.1 section 100-3), or standards established by the utility, whichever are greater. All improvements to the property will conform to applicable laws, ordinances, codes, and regulations which relate to the safety and the sanitation of the dwelling.

E. *Loan Processing.* 1. The utility will assist its consumers in completing an application and promissory note on Form FmHA 444-20.

2. The utility will provide or arrange for technical assistance as needed to determine improvements to be made and their costs.

3. The utility will certify that the applicant has paid bills owed to the utility in a satisfactory manner, and process loans for eligible applicants. Applicable Loan Disclosure and Truth in Lending requirements must be met by the utility.

4. The utility may contract with the applicant to do the weatherization work or arrange for the improvements to be installed by a contractor satisfactory to the utility and the applicant. In either case, the applicant will sign a contract agreement covering the planned improvements. Also, the applicant may act as his/her own contractor provided the utility is reasonably sure the applicant has the necessary skills and labor available to perform the work.

5. Each month, the utility will mail a completed Form FmHA 444-22, "Billing Statement," with attached Form FmHA 444.20 to the FmHA Finance Office, 1520 Market Street, St. Louis, Mo. 63103, for those applicants who are to receive an FmHA loan where payment is authorized by the applicant for work satisfactorily completed. The FmHA will approve the loan and notify the borrower. The Finance Office will then obligate the loans and send a single check to the utility for the total loans approved and obligated each month. If an individual loan cannot be approved, the Finance Office will notify the utility of the reason(s) for disapproval.

F. *Payment for the Work.* The utility will pay the contractor after making such inspection of the work as it deems necessary. The agreement between the contractor and the homeowner should require the contractor to warrant and guarantee for a period of 90 days from the date of completion that the work is free from all defects due to faulty materials or workmanship and that the contractor shall promptly make such corrections as may be necessary by reason of such defects.

G. *Account Servicing.* 1. The utility will follow acceptable accounting practices in maintaining and servicing the borrower's account during the life of the loan. Scheduled note payments will be collected with the borrower's utility service billing. The FmHA will provide the monthly payment amortization table to be used by the utility. For billing cycles other than monthly, the amortization factors to be used will first be approved by the FmHA Finance Office.

2. The utility will remit to the Finance Office, all collections received from borrowers weekly or when receipts reach $2,500, whichever occurs first. Form FmHA 444-23, "Payment Transmittal to the Farmers Home Administration," will be used for this purpose, summarizing payments by FmHA loan number assigned to the utility.

3. When the borrower's account is paid in full, the utility will forward Form FmHA 444-24, "Notification of Final Payment or Transfer of loan to Farmers Home Administration," to the Finance Office. The Promissory Note will be marked "PAID" and returned to the utility for distribution to the borrower.

4. If the utility is unable to collect the FmHA payment from the borrower and the borrower's account becomes more than 90 days delinquent, the utility will submit Form FmHA 444-24, to the Finance Office and notify the borrower of the action taken. The Finance Office will send the borrower's Promissory Note through the State Office to the appropriate County Office for further servicing of the account as provided in FmHA regulations. Once an account has been transferred to FmHA, the utility must no longer accept payments from the borrower.

5. Under no circumstances can a borrower's indebtedness be transferred to another borrower.

6. For income tax purposes, the utility will be responsible for informing the borrower of the interest paid on the loan for each calendar year by January 31 of the next calendar year.

7. On a semi-annual basis, the FmHA Finance Office will send to each utility a detailed list of advances and payments for reconciliation purposes.

8. Interest on unpaid interest shall not be charged.

H. *Bonding.* Fidelity bonding coverage must be provided for the utility officials entrusted with the receipt, custody, and disbursement of funds. The amount of the bond must be at least equal to the maximum amount of money that the utility officials will have access to at any one time.

I. *Inspection of Records.* The utility will provide FmHA (or other appropriate Federal Agencies) at all reasonable times, access to all books and records relating to FmHA loans made to is consumers under the provisions of this Agreement.

J. *Referrals to FmHA.* Applicants who are unable to qualify for a loan as provided herein because the cost of repairs will exceed $1,500, because of lack of repayment ability, or because the applicant is not a utility consumer should be referred to the FmHA County Office serving the area for further consideration of eligibility under other FmHA programs.

K. *Equal Opportunity Clause.* This equal opportunity clause applies to the utility executing the Cooperative Agreement rather than to the contractor performing weatherization work.

1. In the Equal Opportunity clause the term "contractor" means the "utility" and "contract" means "Cooperative Agreement."

2. During the performance of this contract, the contractor agrees as follows: (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited, to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Farmers Home Administration setting forth the provisions of his nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The contractor will send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Farmers Home Administration, advising the said labor union or workers' representative of the contractor's commitments under this agreement as required pursuant to section 301 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will comply with all provisions of such Executive Order and of all relevant rules, regulations, and orders of the Secretary of Labor and of any prior authority which remain in effect.

(e) The contractor will furnish all information and reports required by such Executive Order, rules, regulations, and orders, or pursuant thereto, and will permit access to his books, records, and accounts by the Farmers Home Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in such Executive Order and such other sanctions may be imposed and remedies invoked as provided in the Executive Order or by any such rule, regulation or order, or as otherwise provided by law.

(g) The contractor will include the provisions of the FmHA Equal Opportunity Agreement (Form FmHa 400-1 available in all FmHA offices) in every subcontract or purchase order, unless exempted by such rules, regulations, or orders, so that such provisions will be binding upon each such subcontractor or vendor. The contractor will take such action as the Farmers Home Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by Farmers Home Administration, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

L. *Personal Benefit Clause.* No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this agreement or to any benefit to arise therefrom, unless it be made with a corporation for its general benefit.

M. *Payment for Services.* Consumers may be charged customary fees for technical services provided in determining the type and amount of weatherization improvements, obtaining cost estimates, and for inspections made to insure that the improvements have been properly completed. Loan funds may only be used for these purposes to the extent set forth in paragraph C. However, neither the FmHA nor the applicant/borrower will pay a loan origination or packaging fee, nor will a fee be paid for servicing the account during the life of the loan.

N. *Administrative Policy.* The FmHA State Director, in conjunction with the signing of this agreement, will advise the utility of the following:

1. Eligible rural areas.
2. The interest rate to be charged.
3. The current income limits.
4. Any funding limitations likely to be encountered in the foreseeable future.
5. The processing requirements for this type of loan.
6. Consideration is to be given the potential effect of any weatherization loan made on historic property. The State Director must provide the utility a list of historic properties (including districts) listed in the National Register of Historic Places. (Listings and updates are published regularly in the FEDERAL REGISTER.) Before weatherization improvements are made to historic buildings, the utility must contact the State Director. The State Director, in accordance with Part 1890r of this chapter, will assure that the proposed improvement will not damage the historic integrity or fabric of the building.
7. The FmHA State Director will be responsible for seeing that the utility is notified in the future of any interest rate, income limit, or other program changes. The State Director will provide the needed forms for loan processing to the utility. The utility will advise the State Director when additional forms are required or assistance is needed. The address of the FmHA State Office is

____

(Address)

____

(Phone Number)

____

(Name)

____

(Title of Utility Representative)

Date: ______________________________

____

(Name)

____

(State Director)

Date: ______________________________

[42 FR 61243, Dec. 2, 1977, as amended at 46 FR 61989, Dec. 21, 1981; 47 FR 17467, Apr. 23, 1982]

Subparts C–E—[Reserved]

Subpart F—Rural Cooperative Housing Loans

AUTHORITY: Sec. 510, 63 Stat. 437, 42 U.S.C. 1480; Orders of Secy. of Agr., 29 FR 16210, 32 FR 6650.

SOURCE: 32 FR 12398, Aug. 25, 1967, unless otherwise noted.

§ 1822.231 General.

This subpart sets forth the policies and procedures, and delegates authority for making direct and insured Rural Cooperative Housing loans under section 515 of the Housing Act of 1949. A Rural Cooperative Housing loan will be made in accordance with the provisions of Part 1944 Subpart E as modified by and not inconsistent with this subpart. The basic objective of Rural Cooperative Housing loans is to provide for rural residents cooperatively owned and operated housing and related facilities which are economically designed and constructed.

[32 FR 12398, Aug. 25, 1967, as amended at 45 FR 70776, Oct. 27, 1980]

§ 1822.232 Definitions.

For the purposes of this subpart:

(a) "Cooperative" means a corporation which:

(1) Is organized under the laws of a State as a cooperative,

(2) Will own and operate the housing on a cooperative basis solely for the benefit of the occupants,

(3) Is legally precluded from distributing during the life of the loan any gains or profits from the operation of the housing,

(4) Has a membership consisting solely of eligible occupants of the housing, and

(5) Will restrict occupancy of the housing to eligible occupants, except to any extent that the Farmers Home Administration permits occupancy by others in special circumstances.

(b) "Cooperative housing" means housing owned and operated by a cooperative.

(c) "Subscription Agreement" means the initial contract between the prospective member and the cooperative specifying the terms of application for membership and the amount of his contribution. Farmers Home Administration will provide a sample subscription agreement to be used as a guide by the applicant cooperative.

(d) "Occupancy Agreement" means a contract setting forth the rights and obligations of the member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing. Farmers Home Administration will provide a sample occupany agreement for use as a guide by the applicant cooperative and members.

(e) "Occupancy charge" means the member's proportionate share, calculated on a monthly basis, of the cost of owning and operating the housing, including but not limited to the following: Taxes, insurance, required reserves, estimated cost of current repairs, maintenance, and replacements of project property, principal and interest payments on indebtedness, necessary management expenses, and the cost of any utility services furnished by the cooperative.

(f) "Transfer value" means the value of a member's equity calculated in accordance with a formula determined by the cooperative with the approval of the Farmers Home Administration.

(g) "Gains or profits" do not include any patronage refunds to occupants of the housing, or dividends on stock or membership which is nonvoting and limited as to operating dividends and liquidation value.

(h) References in Part 1944 Subpart E to "rental housing," "rental basis," "tenant," "rents," and "organization" will be construed to mean "cooperative housing," "cooperative basis," "occupant," "occupancy charges," and "cooperative" when used in connection with Rural Cooperative Housing loans.

(i) Definitions in § 1944.205 except those in paragraphs (h) through (l) of this section are applicable to this subpart.

[32 FR 12398, Aug. 25, 1967, as amended at 45 FR 70777, Oct. 27, 1980]

§ 1822.233 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for a Rural Cooperative Housing loan the applicant must:

(1) Be a cooperative which will use the loan to provide cooperative housing and related facilities for persons who are members and eligible occupants as defined in § 1944.205(f).

(2) Meet the eligibility requirements specified in § 1944.211(a) (3), (4), (5), (6), (7), and (8).

(3) Use bylaws substantially conforming to the model bylaws prescribed by Farmers Home Administration and prepared in accordance with the State law.

(b) *Authorized representative of applicant.* The Farmers Home Administration will deal only with the applicant or a bona fide representative of the applicant and his technical advisers. An authorized representative of the applicant must be a person who has no pecuniary interest in the award of the architectural or construction contracts, the purchase of equipment, or the purchase of the land for the housing site.

[32 FR 12398, Aug. 25, 1967, as amended at 45 FR 70777, Oct. 27, 1980]

§ 1822.234 Loan purposes.

Loans may be made for the purposes described in § 1944.212 except that applicable paragraphs of Part 1944 Subpart E will not be applicable and in

1944.212(l) the authorization will be to the borrower rather than limited to a nonprofit corporation or consumer cooperative.

[32 FR 12398, Aug. 25, 1967, as amended at 45 FR 70777, Oct 27, 1980; 47 FR 55629, Dec. 13, 1982]

§ 1822.235 Special conditions.

All of § 1944.215, except paragraph (d), is applicable.

(a) *Loan resolution.* A loan resolution prepared on the basis of guides provided by Farmers Home Administration will be adopted by the applicant's board of directors.

(b) *Application for membership.* Each applicant for membership in the cooperative should complete Form FmHA 410-1, "Application for FmHA Services," in order that the corporation and the Farmers Home Administration can determine eligibility for occupancy.

(c) *Transfer of membership.* A transfer of membership and equity to a new member will be made at the transfer value as defined in § 1822.232.

[32 FR 12398, Aug. 25, 1967, as amended at 45 FR 70777, Oct. 27, 1980]

§ 1822.236 Security.

(a) *General policy.* Each loan will be secured so as to give adequate protection to the financial interest of the Government and reasonable assurance that the purpose of the loan will be carried out.

(b) *Real estate mortgage.* A first mortgage, if obtainable, will be taken on the property purchased or improved with the loan. If a first mortgage is not obtainable, a request for a loan to be secured by a junior mortgage may be submitted with the justification and the State Director's recommendation, to the National Office.

(c) *Loan resolution.* The required loan resolution provides for a security interest in certain funds as specified in the resolution.

(d) *Additional security.* Additional security may be taken as necessary and available. This may include a mortgage on other real or personal property of the applicant. It may also include agreements between the applicant and the members providing for assessments, members' subscriptions, promissory notes, or other forms of liability, as well as mortgages of individual members' property.

(e) *Additional assurance of repayment.* When necessary for adequate assurance of orderly repayment, interested organizations or other parties may be accepted as comakers or endorsers of the note evidencing the loan.

§ 1822.237 Technical, legal, and other services.

Section 1944.222 is applicable except the provisions referring to loans to individuals.

[32 FR 12398, Aug. 25, 1967, as amended at 45 FR 70777, Oct. 27, 1980]

§ 1822.238 Processing applications.

The provisions of § 1944.231 referring to loans to organizations are applicable, except paragraphs (a)(1) and (a)(4) (iii) of this section.

(a) A currently dated financial statement showing assets and liabilities, together with information on the repayment schedule and status of each debt Form FmHA 410-1, and a subscription agreement will be included for all members of the cooperative.

(b) If the applicant claims exemption from Federal or any State income taxes, proof of tax exemption in the form of a letter of determination or other authoritative writing from the Internal Revenue Service or appropriate State agency must be obtained.

[32 FR 12398, Aug. 25, 1967, as amended at 45 FR 70777, Oct. 27, 1980]

§ 1822.239 Preparation of loan docket.

Loan dockets will be prepared in accordance with § 1944.232 with the additions of Form FmHA 410-1, a copy of the subscription agreement, and a copy of the occupancy agreement for each member.

[32 FR 12398, Aug. 25, 1967, as amended at 45 FR 70777, Oct. 27, 1980]

§ 1822.240 Loan approval.

(a) *Authority.* The State Director is authorized to approve or disapprove Rural Cooperative Housing loans in accordance with this subpart, with prior consent of the National Office.

(b) *Loan approval action.* The provisions of § 1944.233(b) referring to loans to organizations are applicable.

[32 FR 12308, Aug. 25, 1967, as amended at 45 FR 70777, Oct. 27, 1980]

§ 1822.241 Loan closing.

The provisions of § 1944.236 for loans to organizations are applicable.

[45 FR 70777, Oct. 27, 1980]

§ 1822.242 Subsequent Rural Cooperative Housing loans.

A subsequent Rural Cooperative Housing loan is a Rural Cooperative Housing loan to an applicant indebted for an initial Rural Cooperative Housing loan of the same type (direct or insured). This subpart applies to subsequent as well as initial Rural Cooperative Housing loans.

§ 1822.243 Complaints regarding discrimination in use and occupancy.

Any occupant or applicant for occupancy or use of Rural Cooperative Housing housing or related facilities who believes he has been discriminated against because of race, color, creed, or national origin may file a complaint with the County Supervisor or State Director. Any such complaint will be referred through the State Director to the National Office.

§ 1822.244 Outright sale of separate houses to member-occupant.

If a cooperative or proposed cooperative wishes to finance a cooperative housing project of separate-site homes so that in the future they could be bought by the member-occupants from the cooperative, special instructions should be obtained from the National Office regarding organizational documents and other matters before proceeding with development of a docket.

§ 1822.245 Loan supervision and servicing.

Loan supervision will be provided according to Subpart C of Part 1930 of this chapter. Loan servicing will be provided according to Subpart B of Part 1965 of this chapter.

[48 FR 56138, Dec. 19, 1983]

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

AUTHORITY: Sec. 523, 82 Stat. 553, 42 U.S.C. 1490c; sec. 524, 83 Stat. 399; sec. 502, 63 Stat. 433, as amended, 42 U.S.C. 1472; sec. 101(a), 82 Stat. 477, 12 U.S.C. 1715z; sec. 201, 82 Stat. 498, 12 U.S.C. 1715z-1; Orders of Secy. of Agr., 29 FR 16210, 32 FR 6650, unless otherwise noted.

SOURCE: 35 FR 16087, July 1, 1970, unless otherwise noted.

§ 1822.261 General.

This subpart sets forth the policies and procedures and delegates authority for making Rural Housing Site (RHS) loans under sections 523 and 524 of the Housing Act of 1949. Section 523 loans are direct loans for the purchase and development of building sites for housing to be built by the self-help method; they have additional requirements which are contained in § 1822.278.

§ 1822.262 Objective.

The basic objective of RHS loans is to assist public or private nonprofit organizations interested in providing sites for housing, to acquire and develop land in rural areas. This land will be subdivided into adequate building sites and sold on a nonprofit basis to (a) families eligible for low and moderate income section 502 Rural Housing (RH) loans, including self-help housing; (b) cooperative Rural Cooperative Housing (RCH) applicants and broadly based nonprofit Rural Rental Housing (RRH) applicants; and (c) applicants eligible for Housing and Urban Development (HUD) sections 235 and 236 insured mortgages.

§ 1822.263 Definitions.

As used in this subpart:

(a) A "private nonprofit organization" is a corporation which: is owned and controlled by private persons; is organized and operated for purposes other than making gains or profits for the corporation or members; and, is legally precluded from distributing to its members any gains or profits.

(b) A "public nonprofit organization" is a nonprofit corporation other than a private nonprofit corporation, including a municipal corporation or other corporate agency of a State or local government.

(c) "Rural area" is open country or rural places as defined in § 1944.10 of Subpart A.

(d) "Development cost" means the cost of purchasing and developing the sites including engineering and legal fees, streets, roads, utilities, minimum essential administrative costs, necessary equipment and estimated interest which the borrower cannot pay from other sources.

(e) "RHS section 523 loan" means a loan to an organization which will provide sites for housing to be built by the self-help method.

(f) "RHS section 524 loan" means a loan to an organization which will provide sites for housing to be built with no limitation as to the method of construction that will be used.

(g) "OGC" means the Office of the General Counsel, including the regional attorney or attorney in charge serving the State in which the RHS project is located.

[35 FR 10687, July 1, 1970, as amended at 40 FR 52837, Nov. 13, 1975; 46 FR 61989, Dec. 21, 1981]

§ 1822.264 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an RHS loan, the applicant must be a private or public nonprofit organization as defined in § 1822.263 (a) or (b) which is authorized to provide housing sites on a nonprofit basis.

(1) If it is a private nonprofit organization as defined in § 1822.263(a), it should also:

(i) Have a membership of at least 10 community leaders.

(ii) Plan to adopt, if it is being newly organized, articles of incorporation and bylaws that generally conform to model articles and bylaws provided by the State director which will be consistent with State law and with changes appropriate to the purposes and powers of an eligible applicant under this subpart.

(b) *Authorized representative of applicant.* The Farmers Home Administration (FmHA) will deal only with the applicant or bona fide representative or the applicant or the representative's technical advisors. An authorized representative of the applicant must have no pecuniary interest in the award of the engineering, architectural or construction contracts, necessary equipment, or the purchase or development of the land.

§ 1822.265 Loan purposes.

RHS loans may be made to qualified applicants:

(a) For the purchase and development of adequate sites, including the construction of essential access roads, streets, utility lines, and necessary equipment which will become a permanent part of the development. If public water and waste disposal facilities are not available and cannot reasonably be provided on a community basis with other financing, including FmHA Water and Waste Disposal Association loans, funds may be included for this purpose.

(b) For the payment of necessary engineering fees, legal fees, and closing costs.

(c) For the payment of actual cash cost of incidental administrative expenses such as postage, telephone, advertising, and temporary secretarial help, if funds to pay these expenses are not otherwise available. The estimated cost of these items should be identified and shown in the budget.

(d) To provide for needed landscaping, planting, seeding, or sodding, or other necessary facilities related to buildings such as walks, parking areas, and driveways.

(e) When legally required by proper local, county, and State Governmental bodies as a condition for subdivision approval, RHS loan funds may be used to provide common areas playgrounds and tot lots, provided such facilities are dedicated to, and maintained by, a public body.

(42 U.S.C. 1480; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[35 FR 16087, July 1, 1970, as amended at 43 FR 24264, June 5, 1978]

§ 1822.266 Limitations.

(a) *Loan limits.* No RHS loan(s) will be made to any applicant which will result in the applicant's owning an unpaid principal balance of more than $100,000 on such loan(s) unless prior authorization for a larger loan is obtained from the national office. No such loan will exceed the development cost as defined in § 1822.263(d), or the value of the property as improved with the loan. These limitations also apply to cases in which the same persons hold a majority of the membership interests or constitute a majority of the directors of two or more applicants.

(b) *Limitations of use of loan funds.* Loans will not be made for:

(1) The purchase of land in excess of the immediate and identified needs in the locality.

(2) The purchase of land from a member of an applicant-organization, or from another organization in which any member of the applicant-organization has an interest, without prior consent of the national office.

(3) Refinancing of debts, except in accordance with paragraph (e) of this section.

(4) Payment of any fee, charge, or commission to any broker, negotiator, or other person for the referral of a prospective applicant or solicitation of a loan.

(5) Payment of any fee, salary, commission, profit, or compensation to an applicant, or to any officer, director, trustee, stockholder, member or agent of an applicant, except as provided in § 1822.265(b). No contract or agreement for services to be paid for with loan funds should be executed by the applicant without prior approval by the State director.

(c) *Sale of developed sites.* The sites developed with a Section 524 loan must be for housing low- and moderate-income families and may be sold to families, nonprofit organizations, public agencies, and cooperatives eligible for assistance under any Section of Title V of the Housing Act of 1949, or under any other law which provides financial assistance. For example, this may include:

(1) Individuals with low and moderate incomes eligible for HUD mortgages.

(2) Individuals with low and moderate incomes eligible for VA guaranteed loans.

(3) Individuals with low or moderate incomes eligible for a loan from any private lender which is authorized by law to provide financial assistance for housing.

(4) Nonprofit organizations funded by Federal, State, or local governments carrying out programs for low- and moderate-income families to obtain housing.

(5) State or local public agencies such as a housing authority or a housing finance development agency carrying out programs for low- and moderate-income families to obtain housing.

(d) *Suitability of sites.* Sites will meet the requirements of the planned use; for example, individual housing or multiple housing or any combination thereof. Building sites must be well located and designed to provide a desirable living environment. Generally a loan will not be made for the development of less than 10 units, but they need not be contiguous.

(e) *Obligations incurred before loan closing.* When an applicant files an application for a loan, the county supervisor will advise the applicant that development work must not be started and obligations for work, materials, or land purchase must not be incurred before the loan is closed. If, nevertheless, the applicant incurs obligations for work, materials, or land purchase before the loan is closed, the State director may authorize the use of loan funds to pay such obligations only when he finds that all the following conditions exist:

(1) The obligations were incurred after the applicant filed a written application for a loan.

(2) The applicant is unable to pay such obligations from its own resources or to obtain credit from other sources, and failure to authorize the use of loan funds to pay such debts would impair the applicant's financial position.

(3) The obligations were incurred for authorized loan purposes.

(4) Contracts, materials, development and any land purchase meet FmHA standards and requirements.

(5) Payment of the obligations will remove any liens which have attached, and any basis for liens that may attach, to the property on account of such obligations or such work, materials, or land purchase.

[35 FR 10687, July 1, 1970, as amended at 40 FR 6951, Feb. 18, 1975]

§ 1822.267 Special conditions.

(a) *Evidence of need.* Loans will be made on the basis of the applicant providing firm information as to the number of sites to be developed and evidence of a need for the proposed building sites in the locality.

(b) *Nondiscrimination.* The borrower will be required to agree not to discriminate or permit discrimination, in accordance with section 3 of the loan resolution form "('Rural Housing Site' Loan to Nonprofit Corporation)," available at all FmHA offices.

(c) *Supervisory assistance.* Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government. County supervisors will counsel with applicants in selecting locations that will provide essential services and facilities and will result in the development of desirable residential communities.

(d) *Loan resolution.* A Loan Resolution will be adopted by the applicant's Board of Directors or similar governing body using a form entitled, "((Rural Housing Site) Loan to Nonprofit Corporation)" available at all FmHA offices. If any provisions are not appropriate to a particular case, proposed substitute language should be submitted to the national office with the recommendations of the State director.

(e) *Development policies.* Development will be planned and performed in accordance with Subpart A, Part 1924 of this chapter, and certain information in a guide entitled "Planning and Developing Building Sites" available at all FmHA offices.

(f) *Water and waste disposal facilities.* If public water and waste disposal facilities are not available and these facilities will be provided on a community basis with funds included in the RHS loan or with other financing, provision should be made to form an organization with members who will provide continuing maintenance and management of facilities. The cost of the facilities should be considered as a cost of developing the sites and included in the price charged for the lots when they are sold.

(g) *Compliance with local codes and regulations.* Planning and development of sites will comply with all State, county, and local planning and zoning requirements, and will be for housing that will conform with any applicable laws, ordinances, codes, and regulations governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, and sanitation.

(h) *Optioning of land.* If a loan includes funds to purchase real estate, the applicable provisions of Subpart A of Part 1943 regarding options will be followed. After the loan is approved, the county supervisor will have Form FmHA 440-35, "Form Letter—Acceptance of Option," or other appropriate form of acceptance, completed, signed by the applicant, and mailed to the seller.

(i) *Use of and accountability for loan funds.* Supervised bank accounts will not be used except when their requirement is made or authorized by the State director for cases where adequate bonding is not available. If a supervised bank account is used, collateral for deposits of funds will be pledged when the supervised bank account exceeds $100,000. All loan funds and funds from other sources to be used to pay the development costs of the site, as well as proceeds from the sale of any sites, will be deposited in accordance with Part 1902, Subpart A of this chapter. The county supervisor will see that funds for land purchase are paid to the seller simultaneously with loan closing. After the loan is closed, monthly reports will be provided to FmHA of all disbursements made and income received by the borrower. Reports for each month will be submitted to the FmHA county office during the first 10 days of the next month. No expenditures will be made without prior FmHA consent for items which are not included in the FmHA approved development cost estimate or for amounts greater than those set forth in such estimate.

(j) *Insurance.* The State director will determine the minimum amounts and types of insurance the applicant will carry.

(1) Suitable workman's compensation insurance will be carried by the applicant for all its employees.

(2) The applicant will be advised of the possibility of incurring liability and encouraged, or required when appropriate, to obtain liability insurance.

(k) *Bonding.* (1) Approved corporate surety bonds will be required in all cases involving a development contract in excess of $20,000, unless an exception is made by the national office. In other cases, the county supervisor will determine whether a surety bond is required.

(2) The applicant will provide fidelity bond coverage for its officers and employees entrusted with the receipt, custody, and disbursement of its funds and the custody of any other negotiable or readily saleable personal property. The amount of the bond will be at least equal to the maximum amount of such funds including funds in bank accounts, and property that the applicant will have in its possession or control at any one time. If permitted by State law, the United States will be named coobligee in the bond. Form FmHA 440-24, "Position Fidelity Schedule Bond," may be used if permitted by State law.

(l) *Conditional commitments for construction of homes on developed sites.* Conditional commitments may be issued on sites developed with an RHS section 524 loan to permit homes to be constructed on sites prior to the sale of the site to an eligible purchaser in accordance with the following:

(1) The requirements of § 1944.45 of Part 1944, Subpart A must be met and a conditional commitment issued prior to the start of construction of the home.

(2) The conditional commitment must be issued to an RHS borrower who can legally provide the proposed housing and has the experience and training in construction to the extent necessary to assure that the housing will be built or jointly to the RHS loan borrower and a builder who has the legal capacity, training and experience necessary to construct the housing. In all cases the following language will be added under "other conditions" on Form FmHA 444-11, "Conditional Commitment":

(i) "Not withstanding the other provisions of this commitment the sale of completed homes on sites developed with section 524 Rural Housing Site loans will be limited to families eligible for assistance under any section of Title V of the Housing Act of 1949 or under any other law which provides financial assistance for housing low- and moderate-income families. The approval of FmHA will be obtained prior to the sale of each home. The request for approval shall be submitted to the local FmHA office along with an application for an RH 502 loan or a financial statement from the purchaser and verification of the other credit that is available."

(ii) The benefits of the nonprofit development of the site(s) must be passed on to the purchaser. This will result in this site being sold for $——— (price to be determined as provided for in (§ 1822.275(b))).

(3) In arriving at the commitment price for the site and the completed home, the value will be based on the present market value of the house only, plus the nonprofit selling price of the lot.

(4) If in order to obtain interim financing for the construction of the homes, the RHS loan borrower requests a subordination by FmHA on individual lots, the State Director may approve the subordination by completing and executing a subordination in the format of Exhibit C of this subpart.

(5) FmHA's lien on any lot will be released only at the time of sale to an eligible purchaser.

(6) The County Supervisor should provide the necessary supervision to assure that the RHS loan borrower takes the necessary action to assure that all qualified builders in the area are aware of the availability of rural housing sites and are given an equal opportunity to participate in this conditional commitment program. As a

minimum, the borrower will be required to submit a signed statement indicating the actions taken including names and dates of contacts with builders.

(7 U.S.C. 1989; 5 U.S.C. 301; sec. 10, Pub. L. 93-347, 88 Stat. 392; 42 U.S.C. 1480; delegation of authority by the Sec. of Agr., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[35 FR 16087, July 1, 1970, as amended at 41 FR 47460, Oct. 29, 1976; 42 FR 44669, Sept. 6, 1977; 43 FR 24264, June 5, 1978; 44 FR 1702, Jan. 8, 1979; 45 FR 39793, June 12, 1980; 46 FR 36106, July 14, 1981; 46 FR 61989, Dec. 21, 1981]

§ 1822.268 Rates, terms, and source of funds.

(a) *Interest.* Current information regarding interest rates may be obtained from any county or State office of the Farmers Home Administration or from its national office at 14th and Independence Avenue SW., Washington, D.C. 20250.

(b) *Repayment period.* Final payment will be due 2 years after the date of the loan. When necessary to carry out the loan purposes, the national office may authorize extension of maturity dates. As lots are sold before the final due date of the note, the proceeds of the sales will be applied on the account or any prior lien, or, with the prior approval of the national office, used in a manner consistent with the purposes of the loan and the security interest of the Government.

(c) *Source of funds.* Loans under this subpart will be made as insured loans, except that loans under § 1822.278 to develop building sites for sale in connection with self-help projects will be made as direct loans.

§ 1822.269 Security.

Each loan will be secured by a mortgage on the property purchased or improved with the loan, and a security interest in the funds held by the corporation in trust for the Government, in accordance with the provisions of the required Loan Resolution.

§ 1822.270 Technical, legal, and other services.

(a) *Appraisals.* The property will be appraised by an FmHA employee authorized to make real estate appraisals. The appraisal will consist of a narrative statement prepared and signed by the authorized employee describing in detail the items considered in arriving at the value of the property. Two values will be established by the appraiser:

(1) The fair market value of the total property "as is".

(2) The aggregate fair market value of the building sites after development.

(i) In determining the value of the property, the appraiser will consider the value and selling prices of similar building sites in the area. The selling prices of similar sites must be fully documented.

(b) *Title clearance and legal services.* For a loan to a public nonprofit organization, title clearance and legal services will be obtained in accordance with instructions from the OGC, observing the provisions of Part 1807 of this chapter, insofar as feasible. For a loan to a private nonprofit organization, the provisions of Part 1807 of this chapter regarding title clearance and legal services will apply. The applicant will be encouraged to have the same designated attorney, where practicable, perform the title clearance work in connection with the purchase of land and the sale of the individual sites.

(c) *Contracts for legal services.* On projects requiring more legal services than are customarily required for title clearance alone, the applicant will be required to have a written contract when loan funds will be used for legal services. All such contracts will be subject to review and approval by the State director and therefore should be submitted to him before execution by the applicant. Contracts will provide for the types of service to be performed and the amount of fees to be paid either in lump sum on the completion of all services or in installments as services are performed.

(d) *Engineering services.* On projects requiring engineering services, a written contract will be required between the engineer and the borrower. All such contracts will be subject to review and approval by the State director and therefore should be submitted to him before execution by the applicant. The form of contract must conform with standard professional practices and describe the types of services to be performed and fees to be paid.

§ 1822.271 Processing applications.

(a) *Application.* The application will be in the form of a letter to the county supervisor with the following information included in or attached to the letter:

(1) Name and address of applicant.

(2) A copy of, or an accurate citation to, the specific provisions of State law under which the applicant is organized; a copy of the applicant's articles of incorporation, bylaws, and other authorizing documents; the names and addresses of the applicant's members, directors, and officers; and if another organization is a member of the applicant organization its name, address, and principal business.

(3) A current, dated, and signed financial statement showing assets, and liabilities, together with information on the repayment schedule and status of each debt.

(4) Evidence of inability to obtain credit from other sources.

(5) General description of the project.

(i) Location and size of tract or tracts to be bought and/or developed.

(ii) Number and size of individual sites planned together with a detailed plot plan.

(iii) Preliminary engineering plans, if available.

(6) Estimated cost and amount of loan needed.

(7) Explanation of applicant's financial contribution to the project.

(8) A map showing the location of and other supporting information on neighborhood and existing facilities such as distance to shopping area, neighborhood churches, available transportation, drainage, sanitation facilities, water supply available or planned, and access to essential services such as doctors, dentists, and hospitals.

(9) If facilities such as water and sewage systems, paved streets, and utilities are not currently available, information on when and how they will be provided.

(10) Evidence of the need for the proposed sites in the locality by low- and moderate-income families and other qualified applicants that are likely to be able to obtain financing for a home.

(11) Written evidence of any State, county, or local planning, zoning, or other ordinances imposing additional restrictions or requirements upon the proposed sites.

(b) *County supervisor's review and evaluation of applications.* The county supervisor will:

(1) Determine that the applicant meets the eligibility requirements of § 1822.264.

(2) Verify that the information provided is accurate and complete.

(3) Determine that:

(i) The sites will be located in a good residential area and that essential facilities and services will be provided.

(ii) The lots will be reasonable in cost and of a type FmHA can appropriately finance.

(iii) There is an immediate and ready market for the proposed sites in the planned location.

(iv) The total number of sites planned does not exceed the number of loans the county supervisor can reasonably expect to include in the rural housing program or for which other credit is reasonably assured when the sites are developed.

(v) Proposed subdivisions will comply with the local codes and ordinances and also meet the requirements of Subpart D of Part 1804.

(4) Evaluate the manner in which the applicant plans to conduct its business and financial affairs.

(5) Comment on the background of the members, directors and officials.

(6) If he has questions about the proposal, send the incomplete docket to the State office for advice.

(7) If for any reason the loan cannot be made, inform the applicant.

(c) *Completion of the docket.* If the county supervisor determines that the applicant is eligible and the loan will be sound and proper, he should request the applicant to make any needed revisions. In addition to the items required in the application the docket must include:

(1) A plot plan and detailed preliminary plans and specifications for development of the building sites.

(2) A detailed cost breakdown of the project for such items as land and rights-of-way, utility installations or connections, on-site improvements, engineering and legal services and estimated interest.

(3) If water and sanitary facilities are not publicly owned, a complete statement as to how they will be provided and details about their ownership and operation.

(4) Satisfactory evidence of review and approval of the proposed development by applicable State and local officials whose approval is required by State or local laws, ordinances, or regulations.

(5) Satisfactory evidence that the appropriate public bodies will accept and maintain all public facilities, including common areas, playgrounds, and tot lots, when dedicated to such bodies.

(d) *Preparation of docket forms.*—(1) *Request for obligation of funds and fund analysis.* Forms FmHA 1944-50, "Multiple Family Housing Borrower/Project Characteristics," and FmHA 1944-51, "Multiple Family Housing Obligation-Fund Analysis," will be completed in accordance with the Forms Manual Insert (FMI).

(2) *County committee certification or recommendation.* County committees will not be used to review RHS loan applications.

(e) *Assembly, review and distribution of complete loan docket items.* When all items required for the complete loan docket have been furnished, they will be examined thoroughly to make sure they are properly and accurately prepared and are complete in all respects, including dates and signatures. The loan docket items will be assembled in the following order and distributed as follows:

Form No.	Name of form or document	Total No. of copies	Signed by borrower	Number for loan docket	Copy for borrower
	Application Letter and Attachments	2		1-O	1-C
	Evidence of Legal Authority (copy or citation of specific provisions of State statutory authority).	2	1	1-O	1-C
	Proof of Organization (certified copy of Articles of Incorporation)	2	1	1-O	1-C
	Certified copy of Bylaws	2	1	1-O	1-C
	List of names and addresses of officers, directors and members	2	1	1-O	1-C
	Narrative plan and other supporting information	2	1	1-O	1-C
	Evidence of Need				
	Certified Copy of Loan Resolution	1	1	1-O	
FmHA 440-4	Assurance Agreement	2	1	1-O	1-C
FmHA 400-1	Equal Opportunity Agreement (when applicable)	2	1	1-O	1-C
FmHA 400-3	Notice to Contractors and Applicants	3		1-C	1-C
FmHA 400-6	Compliance Statement (when applicable)	3		1-C	1-C
	Survey of land given as security, plans specifications, cost estimates, and proposed manner of development.	3	1	1-O	1-C
	Operating budget (if administrative expenses are to be included in loan).	2	1	1-O	1-C
	Appraisal Report with Attachments	1		1-O	
	Preliminary Title Opinion and a Final Title Opinion or a title insurance binder and a mortgage title insurance policy				
	Option or copy of deed, purchase contract, or other instruments of ownership				
FmHA 1944-50	Multiple Family Housing Borrower/Project Characteristics	1		[1] 1	
FmHA 1944-51	Multiple Family Housing Obligation-Fund Analysis	2	2	[1] 1	1

[1] Data input to Finance Office through field office terminals

(f) *Submission of complete docket.* The complete docket will be sent to the State office together with the District Director's comments and recommendations and a draft for a press release.

(g) *Loan approval authority and State Office action.* The State Director is authorized to approve loans in accordance with this Subpart and Subpart A of Part 1901 of this chapter. As soon as it is evident that a loan will be approved, the State Director will complete Exhibit A to Subpart C of Part 2015 of this chapter and submit to the FmHA Finance Office through field office terminals that information contained in Form FmHA 1944-50, "Multiple Family Housing Borrower/Project Characteristics." The State Director may redelegate approval authority to qualified State Office employees. When a docket or preliminary application is received in the State Office, the State Director will:

(1) Utilize the services of technicians on his staff and from other agencies in evaluating the application.

(2) Review the applicant's articles of incorporation and bylaws. If they conform to approved forms for the State as provided in § 1822.264(a)(1)(ii), the State director need not obtain a preliminary opinion from the OGC. In all other cases the State director will, and in any case may, submit the docket with any comments or questions to the OGC for a preliminary opinion as to whether the applicant and the proposed loan meet or can meet the requirements of State law and this subpart.

(3) If additional information is needed to adequately evaluate the application, return the loan docket to the District Director with any comments and recommendations for further processing.

(4) If the docket is sufficiently complete to enable the State Director to determine that the applicant is eligible and the loan would be sound and proper, issue a proposed memorandum of approval listing any specific conditions that must be met before loan closing.

(5) If the applicant is not eligible or the loan would not be sound and proper and the deficiencies cannot be corrected, inform the District Director accordingly.

(42 U.S.C. 1480; delegation of authority by the Sec. of Agr., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[35 FR 16087, July 1, 1970, as amended at 41 FR 7487, Feb. 19, 1976; 41 FR 20392, May 18, 1976; 43 FR 24264, June 5, 1978; 44 FR 4435, Jan. 22, 1979; 50 FR 8583, Mar. 4, 1985]

§ 1822.272 Approval or disapproval of a loan.

The provisions of § 1944.233(b) of this chapter will be followed.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

[44 FR 4435, Jan. 22, 1979, as amended at 45 FR 70777, Oct. 27, 1980]

§ 1822.273 Actions subsequent to loan approval.

After the loan is approved, actions to be taken will be in accordance with § 1944.235.

[35 FR 16087, July 1, 1970, as amended at 45 FR 70777, Oct. 27, 1980]

§ 1822.274 Loan closing.

(a) *Applicable instructions.* The complete loan docket will be sent to the OGC for closing instructions. RHS loans will be closed in accordance with applicable provisions of Part 1807 of this chapter, any provisions set forth by the State director which supplement this subpart, and closing instructions of the OGC, and with the assistance of the designated attorney, representative of the title insurance company, or local attorney, whichever is appropriate.

(b) *Mortgage.* Unless the OGC determines the form to be inappropriate, real estate mortgage Form FmHA 427-1 (State), "Real Estate ——— for ——— (Insured loans to Individuals)," will be used for all RHS Section 524 loans modified as prescribed by or with the advice of the OGC with respect to the name, address, and other identification of the borrower, the style of execution, and the acknowledgment. Additional paragraphs will be included in the mortgage to read as follows:

> Borrower covenants and agrees that it does not and will not decline to sell or otherwise make available to a prospective purchaser because of his race, color, creed or national origin of the properties in the said tract or project. It further agrees to comply

with all Federal, State, and local laws and ordinances prohibiting discrimination and that its failure or refusal to comply with this agreement and any such laws or ordinances shall be a proper basis for the Farmers Home Administration (FmHA) to reject requests for future business with which borrower is identified or to take other corrective action as it may deem necessary to carry out the requirements for FmHA regulations.

This instrument also secures the obligations and covenants of borrower set forth in borrower's loan resolution of (Date), which is hereby incorporated herein by reference.

(c) *Promissory note.* Form FmHA 1944-52, "Promissory Note," will be used. Instructions for preparation will be in accordance with the FMI and the following:

(1) The total amount to be shown in the note will be the amount of the loan shown on Form FMHA 1944-51. The note will be dated the date of the loan closing.

(2) The note will be signed in accordance with FmHA Instruction 427.1 and the FMI for Form FmHA 1944-52.

(3) Payments shall not be deferred.

(d) *Recorded mortgage.* When the real estate mortgage is returned by the recording official, the county supervisor will retain the original in the borrower's case folder. If the original is retained by the recording official for the county records, a conformed copy including the recording data showing the date and place of recordation and book and page number will be prepared and filed in the borrower's case folder. A copy of the mortgage will be delivered to the borrower but will be conformed only if required by State law or if it is the custom of other lenders in the area.

(e) *Date of loan closing.* An RHS loan is considered closed when the mortgage is filed of record.

[35 FR 16087, July 1, 1970, as amended at 42 FR 4408, Jan. 25, 1977; 50 FR 8584, Mar. 4, 1985]

§ 1822.275 Actions after sites are developed.

The building sites will be sold on a nonprofit basis to eligible families or organizations as described in § 1822.266(c).

(a) An option, Form FmHA 440-34, "Option to Purchase Real Property," will be executed. The site will be clearly identified by a land survey.

(b) The sale price of each individual site will not be more than a sufficient amount to pay a proportionate part of the RHS loan and any other actual costs of buying, developing, and selling the building site.

(c) The proceeds from sale of the building sites will be applied on the RHS loan and any prior lien or, with the prior approval of the national office, used in a manner consistent with the purposes of the loan and security interest of the Government. The sites will be released from the mortgage in accordance with § 1872.3 or otherwise in accordance with prior approval of the national office.

§ 1822.276 Subsequent RHS loans.

A subsequent RHS loan is an RHS loan to an applicant indebted for an initial RHS loan. Subsequent RHS loans will be made on the same basis as initial RHS loans.

§ 1822.277 Complaints regarding discrimination in opportunity to buy developed sites.

Any applicant wishing to purchase a site financed by an RHS loan who believes he has been discriminated against because of race, color, creed, or national origin may file a complaint with the county supervisor or State director. Any such complaint will be handled in accordance with § 1944.239.

[35 FR 16087, July 1, 1970, as amended at 45 FR 70777, Oct 27, 1980]

§ 1822.278 Special requirements for RHS section 523 loans (loans to organizations providing sites for self-help housing).

Loans to organizations which will provide sites for self-help housing (RHS sec. 523 loans) will be made under the provisions of this subpart with the following exceptions:

(a) *Eligibility.* The applicant must be a nonprofit organization engaged in assisting self-help projects.

(b) *Interest.* The interest rate will be 3 percent per annum on the unpaid principal balance.

(c) *Source of funds.* These will be direct loans made from the self-help fund.

(d) *Evidence of need.* Loans to newly formed organizations will be made on the basis of the applicant's providing firm information as to the number of sites to be developed and the names of eligible bona fide prospective purchasers who are assured of available home financing. Loans to organizations currently involved in mutual self-help housing projects may be made without submitting a list of the names of prospective site purchasers. There must, however, be definite evidence that enough families are available who are eligible and who will buy the sites when they are developed.

(e) *Multiple advances.* These loans may be disbursed over a period not to exceed 18 months from the date of the first advance.

(f) *Note forms.* Form FmHA 1944-52, "Multiple Family Housing Promissory Note," will be used. See § 1822.274 (c).

(g) *Mortgage.* Unless the OGC determines the form to be inappropriate in any case, real estate mortgage Form FmHA 427-2 (State), "Real Estate ——— for ——— (Direct Loan)," will be used, modified as prescribed by or with the advice of the OGC with respect to the name, address, and other identification of the borrower, the style of execution, and the acknowledgment. Additional paragraphs will be included in the mortgage to read as follows:

> Borrower covenants and agrees that it does not and will not decline to sell or otherwise make available to a prospective purchaser because of his race, color, creed or national origin any of the properties in the said tract or project. It further agrees to comply with all Federal, State, and local laws and ordinances prohibiting discrimination and that its failure or refusal to comply with this agreement and any such laws or ordinances shall be a proper basis for the Farmers Home Administration (FmHA) to reject requests for future business with which borrower is identified or take such other corrective action as it may deem necessary to carry out the requirements of the FmHA regulations.
>
> This instrument also secures the obligations and covenants of borrower set forth in borrower's loan resolution of (Date), which is hereby incorporated herein by reference.

[35 FR 16087, July 1, 1970, as amended at 42 FR 4408, Jan. 25, 1977; 50 FR 8584, Mar. 4, 1985]

§ 1822.279 Loan supervision and servicing.

Loan supervision will be provided according to Subpart C of Part 1930 of this chapter. Loan servicing will be provided according to Subpart B of Part 1965 of this chapter.

[48 FR 56139, Dec. 19, 1983]

EXHIBITS A-B—[Reserved]

EXHIBIT C—SUBORDINATION BY THE GOVERNMENT FOR USE WITH RURAL HOUSING SITE LOANS

Whereas, The United States of America acting through the Farmers Home Administration (hereinafter called the "Government") is the holder of the following-described instrument(s) executed by

____

of ______________________________

County, State of ______________________

(hereinafter called the "Borrower")

Title of instrument	Date of instrument	Date filed	Office filed	Book No.	Page No.

And whereas, ——————— (hereinafter called the "Lender") has agreed to provide a loan to the borrower or to a builder designated by the borrower to construct a home on the property described in this instrument.

Now Therefore, in consideration of the Lender's agreement to make such loan to the borrower, the Government hereby consents to the Borrower obtaining said loan from the lender, and agrees to and hereby subordinates in favor of the Lender and his successors and assigns its liens or security interests created or evidenced by the above-described instrument(s) insomuch as they cover the following described property:

Except That, The Government shall retain a first lien or security interest in the above-described property in an amount of $———. Such first lien will be released only when satisfactory evidence is provided indicating that the lot with completed home is being sold to a family eligible for assistance under any section of Title V of the Housing Act of 1949 or under any other law which provides financial assistance for housing low- and moderate-income families and that the benefits of the nonprofit development of the site are being passed on to the eligible purchaser and that the amount of that first lien is paid on the Borrower's Rural Housing Site Loan debt to the Government.

This subordination is limited to the amount actually loaned by the Lender to the Borrower for the foregoing purpose, but shall not exceed $———.

Only the above described property is affected by this subordination. This subordination shall not otherwise affect or modify the obligations secured by the aforesaid lien instrument(s), and the said obligations shall continue in force and effect until fully paid, satisfied, and discharged.

No member of Congress shall be admitted to any share or part of this agreement or to any benefit that may arise thereupon.

In Witness Whereof, The United States of America has caused these presents to be signed on the ——— day of ———, 19—, pursuant to delegated authority published in 7 CFR, Part 1800.

Witness: UNITED STATES OF AMERICA
——————— By: ———————
——————— Title: ———————
Farmers Home
Administration,
U.S. Department
of Agriculture..

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

[41 FR 47460, Oct. 29, 1976]

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

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SOURCE: 35 FR 15091, Sept. 29, 1970, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Association Loans for Shift-in-Land-Use Projects

AUTHORITY: Sec. 339, 75 Stat. 318; 7 U.S.C. 1989; Orders of the Sec. of Agr., 29 FR 16210, 32 FR 6650, 33 FR 9677, unless otherwise noted.

§ 1823.51 General.

This subpart is supplemented by Part 1890b, of this chapter. This subpart outlines the policies and authorizations for making insured and direct loans for shift-in-land-use projects and for facilities and soil and water conservation practices related thereto.

[35 FR 15091, Sept. 29, 1970, as amended at 37 FR 3172, Feb. 12, 1972; 38 FR 14671, June 4, 1973]

§ 1823.52 Supplementing regulations.

See Subpart I of this part for definitions, supplementing regulations, and provisions pertaining to application processing.

§ 1823.53 Objectives.

The objective of this loan authorization is to provide for shift-in-land use and thereby attain better use of land and water resources and assist primarily not larger than family farmers and ranchers, other rural residents, and rural communities to improve their economic, social, and cultural status. These objectives may be accomplished through a suitable combination of the following:

(a) Conversion of lands to pasture or forests.

(b) Conversion of present land use to outdoor oriented recreational uses, parks, greenbelts, and other open spaces which better serve a rural community.

(c) Reseeding of areas which would benefit from that practice.

(d) Construction of irrigation and flood control facilities related to the shift-in-land use.

(e) Eradication and control of noxious or poisonous weeds and other undesirable types of vegetation.

(f) Spraying of willows, sage, and other brush.

(g) Construction of new fencing and rearrangement of existing fences to provide for better management of livestock and pastures.

(h) Establishment of specific soil conserving and range management practices which will prevent soil erosion and encourage the growth of more desirable species of forage.

(i) Development of water facilities such as natural springs, wells, reservoirs, pits, ponds, and lakes related to the shift in land use.

(j) Development of ponds, lakes, streams, and other measures necessary and feasible for creation or improvement of desirable habitat for fish and water fowl.

(k) Development of forage protective areas, preserves, breeding habitats, caves, and other facilities for creation and improvement of a desirable habitat for game and upland birds.

(l) Reorganization or reconstitution of farm management units, grazing areas or districts, or irrigation areas.

(m) Substantial reorganization of an existing land use.

§ 1823.54 Eligibility.

To be eligible for Farmers Home Administration (FmHA) loans, an association must:

(a) Be or operate as a nonprofit association.

(b) Propose a facility which will primarily serve farmers, ranchers, or other rural residents.

(c) Propose a facility on which there will be specific and measurable shift-in-land use.

(d) Be organized in a manner that each member is entitled to one vote.

(e) Limit membership on its governing board to those who hold membership in the organization.

(f) Be without sufficient funds to accomplish the purposes for which the loan is requested, and be unable to obtain such funds through any other reliable sources on reasonable rates and terms.

(g) Have the legal capacity for acquiring, developing, operating, and maintaining the proposed facility, and for obtaining, giving security for, and repaying the proposed loan.

(h) Be financially sound and so organized and managed that it will be able to provide the use and services of the facility at a price that will be economically beneficial to its members.

§ 1823.55 Pasture and grazing associations.

Shift-in-land-use loans may be made to develop association grazing or pasture facilities. Grazing or pasture associations provide the family size farmer and rancher a proven and effective method of increasing his production and income. If properly organized and operated, such associations result in improved tenure, increased income, stronger rural communities, improved livestock quality and markets, make better use of grass, water, and other resources, permit members to more effectively operate their home farms and ranches and afford stability to their operators. Grazing or pasture associations operate on the basis of providing seasonal grazing for livestock belonging to their members. Membership in an association permits a farmer or rancher to graze his livestock on association pastures for the grazing season and return them to his base unit for the balance of the year. Such a plan provides the livestock farmer or rancher an opportunity to increase the size of his breeding herd and carry over his calves. The dairy farmer may increase the number of producing cows by utilizing the association's pastures for his dry cows and replacement heifers. The crop farmer may add livestock to his operations, graze them on association pastures during the summer and take them home in the fall to clean up fields and more efficiently utilize pasture, other forage, and feed crops produced on his base unit. Opportunities to assist small farmers and ranchers through grazing or pasture associations are numerous. Many opportunities exist to acquire worn-out or abandoned farmland which is ideally suited for the development of seasonal pastures. Many dairymen need additional pastures for dry stock and replacement heifers. Many farmers and ranchers need to add sheep and beef cattle to their farming operations. The use of community pastures to provide seasonal grazing for additional livestock permits them to increase their income without having to increase the size of their home farm. Many opportunities exist where relatively large tracts of land are available. In some cases, these tracts contain acreage suitable for use by pasture associations as well as land ideally suited for family farmers. In these cases, the county supervisor should be alert to the opportunities for a pasture association to option the entire tract and suboption the farming land to family farmers. In other cases, separate options may be used, one for the pasture association and one for each of the families interested in the farming land.

(a) *Definitions.* The following definitions are applicable:

(1) *Grazing facility.* All of the physical property owned or controlled by the grazing association, including deeded land; private, State, or Federal lease lands, and grazing permits or license on Federal or State lands. The term also includes water rights and personal property owned by the association.

(2) *Animal unit (AU).* One cow and calf to weaning time. Recommended animal unit equivalents for other classes of livestock are: Ewe and lamb to weaning, ⅕ AU; Steers and heifers aged 10 months and over at beginning of grazing season, ¾ AU; Rams, ⅕ AU; Bulls, 1³⁄₁₀ AU; Horses, 2 AU. Equivalents of all classes of livestock may be adjusted as necessary to permit equitable assessments to the members of an association when substantial proportion of the grazing is supplied by Forest Service (FS) or Bureau of Land Management, and those agencies assess the association on a different schedule.

(3) *Animal unit month (AUM).* The grazing of 1 cow and calf, or the equivalent for 30 days.

(4) *Grazing unit (GU).* The unit on which an association plans to base its operations. A GU may be the same as an animal unit or it may be a steer, heifer, or other type unit.

(5) *Grazing unit month (GUM).* The grazing of one GU for 30 days.

(6) *Family-sized farms.* A farm operated by one family which provides the entire management and more than 50 percent of the labor for such operation, taking into consideration the additional livestock the farm operation may include as a result of the operator becoming a member of the grazing association.

(7) *Base unit.* The farm or ranch, including land owned, leased or under permit, controlled by the operator.

(b) *Membership.* Grazing associations will be composed primarily of farmers and ranchers operating not larger than family-sized units taking into consideration the additional livestock each member will have as a result of becoming a member of the association. Larger than family-sized operators may be approved as members only after the State Director has determined that there are no other family-sized operators in the area interested in becoming members of the association who can meet the membership requirements, and that additional members are necessary to assure the financial success of the association's proposed operation. Such determination by the State Director will be made a permanent part of the loan docket. Preference for membership will be given to small farmers and ranchers who are in need of additional grazing resources to remain in business. Ordinarily, families will not become members in more than one grazing association financed by FmHA.

(c) *Loan purposes.* Loans may be made to acquire land, leases, permits, rights, and other evidence of control of land and to develop association grazing facilities.

(1) Development will include items necessary to accomplish the shift-in-land-use including housing for managers or caretakers and barns and corrals. Loan funds may be used to pay for the cost of facilities and improvements on public lands that are necessary to complete the shift in land use and the administering agency will not have funds for such purposes within the near future.

(2) See Subpart I of this part for additional loan purposes such as fees, services, refinancing, and others.

(d) *Security.* In those cases where grazing associations have or are acquiring the privilege to graze on public (Federal, State, or other lands), or private lands through lease, permit, or other form of agreement, such agreement will be obtained by or transferred to the association and assigned by it to the FmHA as security for the loan.

(1) FS permits or leases will be held in escrow for the FmHA by the Forest Service (FS) in accordance with the following memorandum of understanding between FmHA and FS:

Memorandum of Understanding Between Farmers Home Administration and Forest Service Grazing Associations Operating on Forest Service-Administered Lands

I. *Purpose.* The purpose of this memorandum is to achieve the mutual objectives of the Forest Service (FS) and the Farmers Home Administration (FmHA) by coordinating general agency responsibilities and functions and promoting maximum cooperation in carrying out agency programs of FmHA and FS when a grazing association operating on FS-administered lands is receiving financial assistance from FmHA.

II. *Agency responsibilities.* A. FmHA has the responsibility for making loans to groups of farmers and ranchers for shifts in land use including the purchase and development of grazing lands.

B. FS is responsible for administration of the National Forests, National Grasslands, and other lands under its control, hereinafter referred to as FS-administered lands. FS may make these lands available to qualified nonprofit organizations of farmers and ranchers for grazing purposes.

III. *Procedures.* A. Upon receipt of a loan application from a rural group that may operate on FS-administered lands, the FmHA County Supervisor will notify the local Forest Supervisor and inquire into the availability of FS-administered lands. The Forest Supervisor will furnish the FmHA County Supervisor information on: (1) The status of any grazing permit or grazing agreement, (2) an estimate of the grazing capacity of the lands involved, (3) any other information which might affect the transaction, and (4) any circumstances which might prevent the Forest Service from entering into a grazing agreement with the proposed association.

B. FS and FmHA will jointly assist the association in effecting its organization, developing its articles of incorporation and bylaws, using guides provided by FS and FmHA, and in formulating rules of management including shifts in land use for all lands controlled by the association. The rules of management will be in accordance with policies of all Federal, State, county, and other appropriate agencies involved and with the needs and operations of the association.

C. FS representatives, working with representatives of other agencies as may be involved, will furnish such technical assistance as is necessary and available for planning and carrying out conservation and range management operations on all lands controlled by the association, including privately owned lands.

D. Grazing agreements make FS-administered lands available for grazing purposes. They are approved for the exclusive use and benefit of the association. Grazing agreements are not property rights. They do, however, entitle the association to use the lands for grazing purposes during the period covered by the agreement and to first priority for renewal at the end of the term period. FS may enter into a grazing agreement with a grazing association financed by FmHA when:

1. The articles of incorporation and bylaws are compatible with the grazing regulations of the Secretary of Agriculture and instructions of FS.

2. FS has determined that the association is competent and qualified to manage grazing on FS-administered lands.

3. The association purchases the base property of a permittee with a term permit to graze livestock on FS-administered lands or otherwise qualifies for grazing privileges on FS-administered lands.

E. When requested by FmHA and the association, FS will hold the grazing privileges contained in a grazing agreement in escrow for security purposes. Under this arrangement the association surrenders its grazing privileges to the Forest Service but may continue to graze livestock pending satisfaction of a mortgage. Until the mortgage is satisfied, no waiver of grazing privileges subsequently presented by the association will be recognized by FS without the written approval of FmHA.

F. If for any reason it should become necessary to discontinue in whole or in part the grazing privileges contained in the grazing agreement of an association borrower, FS will give written notice to this association and to FmHA. The reasons for the adjustment may include noncompliance with the regulations or terms of the grazing agreement, need for resource protection and to allow for a higher public land use. The matter will be discussed with FmHA and at least 1 year will be allowed for possible adjustment before the grazing agreement is modified or terminated.

G. If it becomes necessary for FmHA to liquidate a loan in connection with which grazing privileges have been surrendered to FS through an escrow waiver, the privileges will immediately revert to FS and will be held for FmHA for such period as the property is being operated under temporary arrangement approved by FS and FmHA. Upon disposition of the property by FmHA, the grazing privileges formerly included in the grazing agreement will be allowed a new grazing association borrower or other parties insofar as the association or other parties meet the qualification requirements of both FmHA and FS.

H. Questions pertaining to the handling of grazing association borrower cases not specifically provided for in this agreement will be governed by the regulations and instructions set forth in the FS Manual, FmHA Instructions, and by currently approved policies.

IV. *Effective date.* This Memorandum of Understanding will be effective when signed by both parties and will continue in effect until terminated (but will continue in effect thereafter as to loans then existing) by joint agreement of the parties or by either party giving 60 days' notice in writing to the other party.

V. *Amendments.* FS and FmHA agree that amendments to this Memorandum of Understanding may be proposed by either party and will become effective upon approval of both parties.

(2) Bureau of Land Management permits and leases will be assigned to and held by FmHA as security. Such permits and leases are to be obtained by or transferred to the borrower association, but not by the individual members of the associations unless otherwise authorized by the National Office.

(3) State leases will be renewed for the maximum permissible time, transferred to the association and assigned to FmHA as security, provided such action is permitted by the applicable State statute.

(4) Leases on private lands will be renewed for the maximum time obtainable, transferred to the association and assigned to FmHA as security.

(5) See Subpart I of this part for additional security requirements.

(e) *Shift-in-land-use plans.* Such plans will be developed so as to include each of those items listed in § 1823.53 which can feasibly be incorporated. Each plan will provide for the development of game and wildlife facilities. In most areas, it is possible to develop game and wildlife facilities which are enduring yet relatively inexpensive. Even in small units "odd areas" such as fence corners, rocky spots, bare knobs, blowouts, and borrow pits make ideal areas for the development of game protection and cover. Watershed protection and flood prevention areas along with livestock water ponds quite often are ideally suited for stocking with fish. Associations controlling large land areas may set aside proportionately larger areas for game preserves. Each plan also should include recreational facilities if such facilities are feasible and their operation is compatible with the operation of the grazing facility.

(f) *Management.* Each association will provide for full-time management or caretaker services. Larger associations will likely find it necessary to employ a full-time manager. In such cases, the manager is to be an individual other than a member. Also, he will not be permitted to run livestock other than subsistance livestock and saddle horses on grazing association property. Form FmHA 442-29, "Managers Agreement (Grazing Association)," may be used as an agreement between the association and its manager. Small grazing associations which may not be able to afford a full-time paid manager should, nevertheless, designate one individual who is responsible for observing the facility to assure that fencing and water facilities are maintained and to take care of routine problems. In many cases, small grazing associations have found it convenient to have the part-time services of a retired person. Often grazing associations have housing available which may be used by a retired or semiretired person in exchange for serving as a caretaker. In other cases, small grazing associations have found it convenient to require that managerial and caretaker services be provided by members on a rotating basis. If this plan is followed, the association should enter into a management agreement with the individual members. Form FmHA 442-37, "Management Agreement—Grazing Association," may be used for this purpose.

(g) *Pasture operations.* Grazing associations will base their pasture operations on the best grazing management plan for all land controlled by the association. Assignments of individual pastures will be made only when there are small isolated tracts which cannot readily be included with the main bodies of land controlled by the association.

(h) *Cropland.* All cropland controlled by grazing associations will be restored to grass as soon as possible and in keeping with a practical shift-in-land use and development plan, except that with prior approval of the State Director, an association may put up a small amount of hay for emergency feeding of association-owned sires or game and wild animals. No hay will be put up for livestock owned by individual members.

(i) *Allotted crop acreages.* In those cases where associations planning shift-in-land use projects are acquiring land with an allotment of crops in surplus supply, the association will file a written request with the County Agricultural Stabilization and Conservation Service (ASCS) Committee for such allotments to be held for the association.

(j) *Articles of incorporation and bylaws.* Grazing association articles of incorporation and bylaws will be developed in such manner so as to assist the association in its purposes. A sample set of articles or incorporation and a sample set of bylaws for grazing associations are available at any FmHA office and may be used by State Directors in developing the articles of incorporation and bylaws.

(1) *Articles of incorporation.* Articles of incorporation should provide for each grazing association to engage in the business of both grazing and recreation whenever the operation of recreational facilities are feasible.

(2) *Bylaws.* Bylaws ordinarily should provide for the following:

(i) Membership.

(*a*) Be a farmer or rancher.

(*b*) Require board of director's approval for transfer.

(*c*) Provide for suspension or cancellation for failure to pay fees or assessments.

(*d*) Provide for priority for selection of members. Such system will provide for priority to applicants who will operate not larger than family-size units, taking into consideration the additional livestock to be run as a result of becoming a member of the grazing association.

(ii) Voting.

(*a*) Provide for one member—one vote.

(iii) Meetings.

(*a*) Provide for annual and special meetings.

(iv) Officers.

(*a*) Provide for election.

(*b*) Establish duties.

(v) Fiscal management.

(*a*) Authorize board of directors to establish and collect grazing fees.

(*b*) Authorize board of directors to levy assessments for debt payments and operation and maintenance without a vote of the membership.

(*c*) Provide that a sufficient portion of the annual grazing fee to meet at least operating expenses be paid prior to entry of livestock on association pastures with the balance, if any, of such fee paid before livestock is removed from association facilities.

(*d*) Provide for obtaining caretaker or management services.

(k) *Membership and grazing unit requirements for loan closing.* Loan approval officials will include in letters of conditions the minimum number of members to be required, the number of grazing units to be sold, and the initial cash contribution per grazing unit to be collected. The number of grazing units to be sold will be the number estimated to be available during a typical year after facility is fully developed. Loans will not be closed until these and all other conditions of loan approval have been met.

(l) *Membership certificate.* A sample membership certificate may be obtained in any FmHA office.

(m) *Grazing permit.* A sample grazing permit may be obtained in any FmHA office.

(n) *Using funds available under other agricultural programs for development of facilities.* (1) Applicants and borrowers will be encouraged to make full use of funds available under other agricultural programs such as those administered by ASCS and Soil Conservation Service (SCS) for development of facilities. In many cases, ASCS State and county regulations provide for organizations and associations to earn conservation payments through the use of pooling agreements. In addition, it may be possible for individual members of associations to earn conservation payments through conservation work accomplished on association controlled property. County and district supervisors and State staff members should keep themselves thoroughly acquainted with the assistance available under such programs and maintain close liaison with representatives of other agencies administering such programs.

(2) Ordinarily, loan funds may not be used to pay that part of the cost of facilities, improvements, and practices which will be earned by association members by participating in the Agricultural Conservation Program (ACP) and which can be covered by purchase orders or assignments to material suppliers, contractors, and so forth. Association loan funds may be advanced to cover all or part of the cost of work for which the ACP payments will be made only when it is not possible to use purchase orders or such assignments. In such instances, members of the borrower association will be required to assign to the association all of those portions of the ACP payments they will earn for practices for which loan funds are advanced. As a condition of loan approval, the borrower association will be required to pledge the proceeds of such assignments for payment on the loan when they are received. The amount to be received from such assignments and the date they will be received will be determined before loan closing. The loan repayment schedule will then be made to provide for the lump sum payment of the entire amount received from ACP payments on or before the next due date after their receipt and the scheduling of subsequent annual payments for the orderly retirement of the remaining principal amount of the loan plus interest.

(o) *Dockets.* Dockets will include items shown below and any additional material, information, or documents found necessary or desirable by the State Director.

Form No.	Name of item	Total number of copies	Number signed	Docket	Copy for borrower
AD 621	Preapplication for Federal assistance	2	1	1	0
FmHA 400-1	Equal opportunity agreement	2	1	1	1
FmHA 400-3	Notice to contractors and applicants	3	1	1	1
FmHA 400-4	Assurance agreement	2	1	1	1
FmHA 400-6	Compliance statement	3	3	1	1
FmHA 422-1	Appraisal report (farm tract)	1	1	1	0
FmHA 424-1	Development plan (including contracts, if any)	2	1	1	1
FmHA 1940-1	Request for obligation of funds	5	0 and 1C	1	1
FmHA 440-2	County committee certification or recommendation	1	1	1	0
FmHA 440-34	Option to purchase real property	3	2	1	1
FmHA 442-7	Operating budget	2	1	1	1
FmHA 1942-8	Resolution of members or stockholders	1	1	1	0
FmHA 442-12	Financial statement	2	1	1	1
FmHA 442-14	Association project fund analysis	3	0	1	0
FmHA 442-17	Membership list (grazing association)	2	2	1	1
FmHA 442-29	Managers agreement (grazing association)	2	2	1	1
FmHA 442-33	Shift-in-land-use plan	1	0	1	0
FmHA 442-36	Application for membership in grazing association	1	1	1	0
FmHA 442-37 [1]	Management agreement—grazing association	2	2	1	1
FmHA 442-39	Processing check list (other than public bodies)	4	0	1	1
FmHA 442-44	Project summary (shift-in-land-use grazing)	3	1	1	0
FmHA 442-45	Letter of intent to meet conditions	2	1	1	1
FmHA 442-48	Grazing association loan resolution	2	1	1	1
	Legal service agreement	3	1	1	1
	Evidence of title to assets	1	1	1	0
	List of association officers	1	1	1	0
	Leases, permits, and other evidence of grazing rights	1	0	0	0
	Stock or membership certificate (facsimile or voided copy)	1	0	1	0
	Articles of incorporation	2	1	1	1
	Before and after maps	1	1	1	1
	By-laws	2	1	1	1
	Letters of conditions	4	1	1	1

[1] Prepare enough additional copies so that each member is furnished a copy. Signed copy retained by Secretary.

[35 FR 15091, Sept. 29, 1970, as amended at 41 FR 7488, Feb. 19, 1976; 50 FR 7295, Feb. 22, 1985]

§ 1823.56 Incidental forestry development.

(a) Shift-in-land-use loan funds may be used for forestry management or development when: Shift-in-land-use loans are being made to applicants primarily for purposes other than forestry; a portion of applicant's lands can best be utilized by preservation and development of the forestry resources on such lands, and; implementation of a forestry management plan on such lands provides a practical and incidental addition to the shift-in-land-use plan.

(b) Applicants proposing to preserve and develop forestry lands in connection with their shift-in-land-use plan are responsible for obtaining assistance from public or private sources in preparation of a forestry management and operating plan. The plan will include projected yields, estimated operating expenses and income, and a cruise or inventory of existing timber. The report should include both the kind and amount of timber on the land, size and growth rate of predominate type trees, amount of timber now merchantable, and dates on which the remaining timber should be harvested. It also should include the kinds of forestry product uses such as pulpwood, mine timber, railroad ties, or other uses for which the timber is suitable. The plan of operation and management should be available for consideration during the preparation of the docket and will be attached to the project summary.

§ 1823.57 Land development and reorganization associations.

Associations may provide for the reorganization or reconsititution of entire areas such as farm management units, irrigation districts, and other areas through shift-in-land-use loans. Farmers and ranchers of an entire irrigated area might, through the benefits of a shift-in-land-use loan, completely reorganize the area. Land control patterns may have resulted in inefficient irrigation and drainage systems. The project might include any adjustment of land parcels among operators, realignment of parcels boundaries, and completely redesign irrigation and drainage facilities. State directors receiving applications for assistance under this section should forward complete information regarding the proposal to the national office.

§ 1823.58 Other shift-in-land-use projects.

State Directors receiving applications or inquiries for other shift-in-land-use projects should forward complete information regarding the proposal to the national office.

§ 1823.59 Operation and management.

Each applicant must have a feasible plan for the operation, maintenance, and management of its facility and for the management of its business operations, including the establishment and maintenance of financial accounts and records. Such plans normally will be approved prior to loan closing.

(a) *Bookkeeping.* Where a public accountant will be retained to annually audit the books of the applicant, it would be to the applicant's interest to retain such accountant prior to loan closing and to secure his assistance in setting up the initial books.

(b) *Taxes.* In computing the applicant's operating budget, Form FmHA 442-7, consideration will be given the applicable State and Federal taxes. The applicant's attorney should be able to advise the applicant as to such taxes. The attorney, with the assistance of the applicant's accountant or treasurer should be able to provide a realistic estimate of the annual amount of such taxes.

§ 1823.60 Loan approval authority.

Current information regarding limitations on loan approval authorities of various officials of the FmHA may be obtained from any County or State Office of the Farmers Home Administration or from its national office at 14th and Independence Avenue SW., Washington, D.C. 20250.

§ 1823.61 Other.

See Subpart I of this part for requirements pertaining to the following:

(a) Repayment terms and deferred payments.
(b) Insurance and bonding.
(c) Reserves.
(d) Facility control.
(e) Security.

§ 1823.62 Purchase price.

(a) *Land and rights and existing facilities.* The purchase price of land and rights such as easements, leases, permits, water rights, rights-of-way, existing facilities, and other such interests needed for facility development will not exceed their present market value. Present market values will be determined only after review of an appraisal report prepared in accordance with Subpart I of this part.

(b) *Machinery and equipment.* In cases where a substantial amount of funds are necessary for purchase of machinery and equipment, associations ordinarily will be required to call for bids in a manner acceptable to FmHA and specified by the loan approval official to assure the best obtainable price.

§ 1823.63 Loan processing.

Applications will be processed in accordance with this subpart and Subpart I of this part.

§ 1823.64 State issuances.

Each State Director will, with the assistance of the Office of the General Counsel, supplement this subpart with State issued regulations, forms, worksheets, sample documents, and such other guidance as necessary to successfully carry out the program.

§ 1823.65 Performing development.

Projects will be constructed in accordance with the policies and procedures contained in § 1942.9 of FmHA Instruction 1942-A.

(7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

[35 FR 15091, Sept. 29, 1970, as amended at 44 FR 6353, Feb. 1, 1979]

§ 1823.66 Loan supervision and servicing.

Loans will be serviced in accordance with Subpart E of Part 1951 of this chapter.

[35 FR 15091, Sept 29, 1970 as amended at 47 FR 52118, Nov. 19, 1982]

§ 1823.67 Subsequent loans.

Subsequent loans will be made in accordance with the requirements of this subpart.

Subparts C–G—[Reserved]

Subpart H—Association Loans for Irrigation and Drainage and Other Soil and Water Conservation Measures

Authority: Sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Orders of the Secy. of Agr., 29 FR 16210, 32 FR 6650, unless otherwise noted.

§ 1823.221 General.

This subpart is supplemented by Part 1890b, and of this chapter. This subpart outlines the policies and authorizations for making insured and direct loans to associations for irrigation, drainage, and other soil and water conservation and use projects.

[35 FR 15901, Sept. 29, 1970, as amended at 37 FR 3172, Feb. 12, 1972; 38 FR 14671, June 4, 1973; 38 FR 16855, June 27, 1973]

§ 1823.222 Supplementing regulations.

See Subpart I of this part for definitions, supplementary regulations, limitations, and regulations pertaining to application processing.

§ 1823.223 Basic objectives.

The basic objectives of loans to associations as authorized by this subpart are to encourage and promote the development, conservation, and best use of water and land resources, including prevention of soil erosion and stream pollution, and to provide needed services and facilities through such associations for the largest number of farmers and other rural residents in a given area within prevailing economic and physical limitations. To achieve these objectives, an association should propose to extend its facilities and services to provide coverage to the greatest possible number of farmers and other rural residents needing the service. The objectives may be met through assistance to a group of farmers and other rural residents to develop community irrigation dams and canals; a soil and water conservation district to purchase heavy earth moving equipment; a community for drainage of land; a group of farmers to develop soil conservation measures such as terraces, shelter belts, and similar developments.

§ 1823.224 Eligibility.

(a) *Requirements.* To be eligible for loan assistance for purposes outlined in this subpart, an association must be primarily composed of farmers and other rural residents, and:

(1) Propose a facility which will primarily serve farmers and other rural residents.

(2) Propose the application or establishment of soil conservation practices, or the construction, improvement, or enlargement of facilities for drainage, or the conservation, development, use, or control of water, primarily for serving farmers and other rural residents.

(3) Be without sufficient funds to carry out the purposes for which the loan is requested, and be unable to obtain adequate credit from other sources at reasonable rates and terms.

(4) Have the legal authority for constructing, operating, and maintaining the proposed facility or service, and for obtaining, giving security for, and repaying the proposed loan.

(5) Be financially sound and so organized and managed that it will be able to provide efficient and continued service.

§ 1823.225 Loan purposes.

Loans may be made to associations for:

(a) *Drainage facilities.* Install or improve open or closed drainage facilities in farm areas otherwise too wet for sustained agricultural production.

(b) *Irrigation facilities.* Install, rehabilitate, or enlarge irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, canal lining, pipelines, and sprinklers and other such items.

(c) *Soil and water conservation and use facilities.* Install and improve soil conservation and water control facilities such as dikes, terraces, detention reservoirs, stream channels, ditches, and other special land treatment and stabilization measures or structures needed to protect farms and rural residences from water damage, provided such facilities do not presently exist and are not planned for immediate construction under programs like those administered by the Soil Conservation Service (SCS) and the Corps of Engineers.

(d) *Special-purpose machinery and equipment.* Purchase of special-purpose equipment and machinery to establish or maintain soil and water conservation measures such as terraces, ponds, land leveling for irrigation or drainage, subsoiling, seeding, tree planting, and removal of brush, scattered trees, and stumps, provided:

(1) Such equipment or machinery is not otherwise available when and as needed.

(2) There is sufficient need and local demand to justify ownership.

(3) Rates to be charged for use of such equipment or machinery include, among other things, an allowance for depreciation, operation and maintenance, and debt repayment.

(e) *Forestry equipment and services.* Purchase or rent basic special-purpose equipment, facilities, certain land or land rights, and supplies needed for furnishing services for the establishment, improvement, protection, and harvesting of timber (not processing) suitable for lumber, pulp, poles, or posts: *Provided,* That the forest program and forest practices benefiting from such services are in accordance with accepted forestry management and are directly related to and will promote approved conservation practices for the development, use, and control of water resources on farms and in forests. Special-purpose equipment will include such items as tractors, dozers, plows, planters, trucks, loaders, firefighting equipment, and sprayers. Facilities will include such items as ponds, reservoirs and pipelines primarily for fire protection purposes, buildings for storage of equipment and supplies, nurseries, access roads, fire lands, and look-out towers. Supplies will include such things as seed, seedlings, fertilizers, fencing, and pesticides. Land or land-rights acquisition will be limited to that necessary for sites for facilities listed above which are directly related to the forestry program. Loans for these purposes may be made only when the equipment, supplies, and facilities to be provided:

(1) Are not readily available when and as needed.

(2) Will be justified by the local need and demand.

(3) Will be made available to users at rates which will cover loan amortization, obsolescence, replacement, operation, and in the case of supplies, at least their cost.

(f) *Other loan purposes.* See Subpart I of this part for additional loan purposes such as fees, services, land and rights, refinancing, and others.

§ 1823.226 Using funds available under other agricultural programs for development of facilities.

Applicants and borrowers will be encouraged to make full use of funds available under other agricultural programs such as those administered by Agricultural Stabilization and Conservation Service (ASCS) and SCS for development of facilities. In many cases, ASCS State and county regulations provide for organizations and associations to earn conservation payments through the use of pooling agreements. In addition, it may be possible for individual members of associations to earn conservation payments through conservation work accomplished on association controlled property. County and District Supervisors and State staff members should keep themselves thoroughly acquainted with the assistance available under such programs and maintain close liaison with representatives of other agencies administering these programs. Ordinarily, loan funds may not be used to pay that part of the cost of facilities, improvements, and practices which will be earned by association members by participating in the Agricultural Conservation Program (ACP), and which can be covered by purchase orders or assignments to material suppliers, contractors, and so forth. Association loan funds may be advanced to cover all or a part of the cost of work for which the ACP payments will be made only when it is not possible to use purchase orders or such assignments. In such instances, members of the borrower association will be required to assign to the association all of those portions of the ACP payments they will earn for practices for which loan funds are advanced. As a condition of loan approval, the borrower association will be required to pledge the proceeds of such assignments for payment on the loan when they are received. The amount to be received from such assignments and the date they will be received will be determined before loan closing. The loan repayment schedule will then be made to provide for the lump sum payment of the entire amount received from ACP payments on or before the next due date after their receipt and the scheduling of subsequent annual payments for orderly retirement of the remaining principal amount of the loan plus interest.

§ 1823.227 Security for loans to soil and water conservation districts.

In addition to a mortgage on the equipment, loans to soil and water conservation districts and similar organizations for the purchase of equipment authorized in § 1823.225(d) will be secured by assignments of income. Such assignments will be based on contracts between the borrower association and landowners and others for whom work is being performed and will provide for the payment to the Farmers Home Administration (FmHA) of a specified amount for each unit of work (yard of earth moved, equipment hour, or other) accomplished. Loan resolutions will require the borrower association to furnish FmHA on a monthly basis a copy of each contract completed, and to pay the amount assigned by each contract. Sample forms entitled "Contract for Soil and Water Development" and "Assignment of Income" are available at all FmHA offices and may be used in the preparation of acceptable contracts and forms of assignment.

§ 1823.228 Articles of incorporation and bylaws.

Associations should develop articles of incorporation and bylaws in such a manner so as to assist the association in its purposes. Sample copies of articles of incorporation and bylaws for associations providing irrigation drainage and other soil and water conservation projects are available at all FmHA offices and may be signed by State Directors in developing acceptable articles of incorporation and bylaws.

§ 1823.229 Coordination with State and local agencies.

Projects financed in whole or in part with an FmHA loan will be coordinated with appropriate State and local agencies in accordance with the following:

(a) *Compliance with special laws and regulations.* Applicants for loans will be required to comply with State and local laws pertaining to:

(1) Organization of the association and its authority to install, operate, and maintain the facilities proposed to be acquired and developed with loan funds.

(2) The borrowing of money, giving security therefor, and raising revenues for the repayment thereof.

(3) Appropriation, diversion, storage and use of water, and disposal of excess water. All of the rights of any landowners, appropriator, or user of water from any source will be fully honored in all respects as they may be affected by facilities to be installed. If, under the provisions of State law, notice of the proposed diversion or storage of water may be filed in the office of an appropriate State official, such notice must be filed by the applicant unless otherwise directed by the National Office. Even though such filing may be optional under State law, the record might be of value at some future time to protect the borrower's right or priority to the use of water. An applicant must furnish evidence to provide reasonable assurance that its water rights will be or have been properly established; will not interfere with prior vested rights; will likely not be contested or enjoined by other water users or riparian owners; and will be within the provisions of any applicable interstate compact.

(4) Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940-J, available in any FmHA office.

(b) *Evidence of complaince with plans, other laws or regulations.* Applicants for loans will submit evidence that the proposals are consistent with overall economic development plans, or other local or area development plans, zoning laws or ordinances, and have the sanction of local or State engineers and State agencies such as, State Game or Fish Department, Resources and Development Commissions or Authorities.

(E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b) Intergovernmental Cooperative Act of 1968 (42 USC 4231(b)))

[35 FR 15091, Sept 29, 1970, as amended at 48 FR 29120, June 24, 1983]

§ 1823.230 Operation and management.

Each applicant must have a feasible plan for the operation, maintenance, and management of its facility and for the management of its business operations, including the establishment and maintenance of financial accounts and records. Such plans ordinarily will be approved prior to loan closing.

§ 1823.231 Purchase price of land rights, equipment, and existing facilities.

(a) *Land, rights, and existing facilities.* (1) In those cases where land or land rights being acquired do not represent relatively large purchase prices, the State Director will determine that they are being acquired at a reasonable price. He may require an appraisal report if there is reason to question the proposed purchase price.

(2) In those cases where relatively large or expensive tracts of land or land rights and other such interests needed for facility development are being acquired, their purchase price will not exceed their present market value, or the price established by the court in those cases where land or land rights are being acquired through condemnation.

(3) In all cases where existing facilities are being acquired, their purchase price will not exceed the present market value.

(4) Present market values will be determined only after review of an appraisal report prepared in accordance with Subpart I of this part.

(b) *Machinery and equipment.* Where substantial amounts are necessary for purchase of machinery and equipment, associations ordinarily will be required to call for bids in a manner acceptable to FmHA, and as specified by the loan approval official, to assure the best obtainable price.

§ 1823.232 Loan approval authority.

Current information regarding limitations on loan approval authorities of various officials of the FmHA may be obtained from any county or State office of the FmHA or from its national office at 14th and Independence Avenue SW., Washington, D.C. 20250.

§ 1823.233 Others.

For requirements pertaining to the following, see Subpart I of this part.

(a) Security.

(b) Repayment terms and deferred payments.

(c) Insurance and bonding.

(d) Reserves.

(e) Professional services.

(f) Facility control.

§ 1823.234 Loan processing.

Applications will be processed in accordance with this subpart. Dockets will include items shown below and any additional material, information, or dockets found necessary or desirable by the State Director.

Form No.	Name of item	Total number of copies	Number signed	Docket	Copy for borrower
AD 621	Preapplication for Federal assistance	2	1	1	0
FmHA 400-1	Equal opportunity agreement	2	1	1	1
FmHA 400-3	Notice to contractors and applicants	3	1	1	1
FmHA 400-4	Assurance agreement	2	1	1	1
FmHA 400-6	Compliance statement	3	3	1	1
FmHA 422-1	Appraisal report (farm tract)	1	1	1	0
FmHA 1940-1	Request for obligation of funds	5	0 and 1C	1	1
FmHA 424-1	Development plan (including contracts, if any)	2	1	1	1
FmHA 440-2	County committee certification or recommendation	1	1	1	0
FmHA 440-34	Option to purchase real property	3	2	1	1
FmHA 442-7	Operating budget	2	1	1	1
FmHA 1942-8	Resolution of members of stockholders	1	1	1	0
FmHA 1942-9	Resolution (security agreement)	2	1	1	1
FmHA 442-12	Financial statement	2	1	1	1
FmHA 442-14	Association project fund analysis	3	0	1	0
FmHA 442-19	Agreement for engineering services	3	1	1	1
FmHA 442-39	Processing check list (other than public bodies)	3	1	1	0
FmHA 442-42	Project summary (irrigation, drainage, other soil and water conservation measures)	3	1	1	0
FmHA 442-46	Letter of intent to meet conditions:				
	List of association officers	1	1	1	0
	Certified membership list	1	1	1	0
	Stock of membership certificate (facsimile or voided copy)	1	1	1	0
	Articles of incorporation or charter of other evidence of creation	2	1	1	1

[50 FR 7295, Feb. 22, 1985]

§ 1823.235 State issuances.

Each State Director, with the assistance of the Office of the General Counsel, will supplement this subpart with State regulations, forms, worksheets, sample documents, and such other guidance as necessary to successfully carry out the program.

§ 1823.236 Performing development.

Projects will be constructed in accordance with the policies and procedures contained in Subpart A of Part 1942 of this chapter.

§ 1823.237 Loan supervision and servicing.

Loans will be serviced in accordance with Subpart E of Part 1951 of this chapter.

§ 1823.238 Subsequent loans.

Subsequent loans will be made in accordance with the requirements of this subpart.

Subpart I—Processing Loans to Associations (Except for Domestic Water and Waste Disposal)

AUTHORITY: Sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Orders of Sec. of Agr., 29 FR 16210, 32 FR 6650, 33 FR 129, unless otherwise noted. Sections 1823.280 to 1823.289 also issued under sec. 602, 78 Stat. 528; 42 U.S.C. 2942.

SOURCE: Sections 1823.251 to 1823.279 appear at 35 FR 15091, Sept. 29, 1970. §§ 1823.280 to 1823.289 appear at 37 FR 14218, July 18, 1972, unless otherwise noted.

§ 1823.251 General.

This subpart is supplemented by Part 1890b of this chapter. This subpart sets forth the procedures for processing insured and direct loans as authorized by Subparts B, and H of this part. It also supplements the policies expressed in those subparts.

[35 FR 15091, Sept. 29, 1970, as amended at 37 FR 3172, Feb. 12, 1972; 38 FR 14671, June 4, 1973; 38 FR 16855, June 27, 1973; 42 FR 17099, Mar. 31, 1977]

§ 1823.252 Definitions.

(a) *General.* The following definitions are applicable in all cases covered by the subparts referred to in § 1823.25.

(1) *Association.* The term "association" includes municipalities, counties, other political subdivisions of a State; districts, public authorities and the like; cooperatives and corporations operated on a nonprofit basis, and Indian tribes on Federal and State reservations and other federally recognized Indian tribes, which have the legal powers to engage in the activities authorized in this subpart.

(i) An existing private corporation even though organized under the general profit corporation laws may come within this definition if it actually will be operated on a nonprofit basis under such charter, bylaws, mortgage, or supplementary agreement provisions as may be required as a condition of loan approval. Associations just being formed will be incorporated under appropriate State nonprofit or cooperative statutes unless State statutes do not provide for nonprofit corporations or cooperatives suitable to carry out the purposes of the loan.

(ii) An association may receive assistance for more than one of the major association loan purposes when it is organized with the necessary powers conferred by State law to engage in multiple purpose activities; however, grant assistance is authorized only in connection with domestic water or waste disposal facilities.

(iii) Associations which do not come within the above definition include cooperative or other service-type organizations engaged primarily in selling supplies, processing, or marketing agricultural and forestry products.

(2) *Farmer.* The word "farmer" as hereinafter used will be construed to mean one who is engaged in the production of agricultural commodities (including persons engaged in the production of fish under controlled conditions), ranchers, farm tenants, and farm laborers.

(3) *Rural resident.* The term "rural resident" means anyone who permanently resides in a rural area.

(4) *Rural area.* The term "rural" or "rural area" shall not include any area in any city or town which has a population in excess of 10,000 inhabitants according to the latest reliable population estimates.

(i) Any city, town, village, or the like which has a population in excess of 5,500 permanent inhabitants, according to the latest reliable, dependable population estimate.

(ii) A densely settled area (where the principal land use and occupancy is residential or commercial) surrounding, adjacent to, or growing out of a town, village, or place of more than 5,500 people.

(iii) An established community or subdivision development near to or likely to become closely associated with a town, village, or place of more than 5,500 people. When determining whether a residential area is to be considered near to, or a part of, or likely to become closely associated with a place of more than 5,500 people, minor open spaces due to physical or legal barriers, commercial or industrial developments, parks, areas reserved for convenience or appearance, or narrow strips of land will be disregarded.

(5) *Direct loan.* A "direct loan" means a loan made from funds in the Farmers Home Administration (FmHA) direct loan account.

(6) *Insured loan.* The term "insured loan" means either:

(i) A loan made from funds furnished by a lender and insured by the FmHA at the time of closing, or

(ii) A loan made from the Agricultural Credit Insurance Fund (ACIF), to be sold to a purchaser and insured by the FmHA at the time of sale.

(7) *Tax-exempt public body.* The term "tax-exempt public body" means a municipality, political subdivision, public authority, district, or similar organization issuing obligations on which the interest income is exempt from Federal income taxes.

(8) *Typical year.* The term "typical year" as used in this and other subparts of this part pertaining to associations means a year after which the association has completed its development and which is anticipated to be representative of the ordinary or normal year the association may expect. The number of users, members, or participants to use in analyzing the typical year's operation will be those who reside in the area at the time of loan closing and can reasonably be expected to become users of the facility.

(b) *Special terms.* For definition of terms applicable only to certain association programs, see the subparts of this part pertinent to those programs.

(7 U.S.C. 1989; delegation of authority by the Sec. of Agr., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[35 FR 15091, Sept. 29, 1970, as amended at 38 FR 8663, Apr. 5, 1973]

§ 1823.253 Use of loan funds.

Funds may be used in accordance with the purposes prescribed in the applicable policy subpart and the following:

(a) *Equipment (including office equipment).* Purchase or rent equipment to install; or to purchase equipment to maintain facilities which may be installed or improved in accordance with this subpart and/or Subparts B and H of this part, when it is not practical for the applicant to purchase such equipment with contributions or funds otherwise available, provided:

(1) Such equipment is not otherwise available when and as needed.

(2) There is sufficient need to justify ownership or rental. It is expected that borrowers ordinarily will purchase equipment from their cash on hand or cash contributions.

(b) *Acquire land and rights.* Acquire land, interests in land, and rights such as water rights, leases, permits, rights-of-way, and other evidences of land or water control which are necessary to development of the facility.

(c) *Buildings, fences, secondary facilities, and relocation.* (1) Construct:

(i) Buildings of modest design, size, and cost, and fences essential to the successful operation or protection of authorized facilities and provide storage for tools and supplies needed to operate the facility; and

(ii) Secondary facilities such as gas or electric service lines to convey fuel or energy for, or utilities for primary facilities.

(2) Relocate roads, bridges, utilities, fences, and other public or private improvements.

(d) *Services and fees.* Pay costs incidental to the establishment of such facilities or for services necessary in accomplishing any of the above purposes including, but not limited to:

(1) Paying fees or other legal expenses of establishing a water right through appropriation, agreement, permit, or court decree.

(2) Paying for other services necessary in obtaining the loan, and in planning and completing the facilities to be financed.

(3) Acquiring a water supply by the purchase of water stock or membership in an incorporated water users association.

(e) *Initial operating expenses.* Pay initial operating expenses that will be incurred subsequent to project completion and before any or sufficient revenue is realized from the system or from taxes or assessments when: The association is unable to pay for such expenses from contributions or other sources, or; due to unforeseen construction delays it is determined that such purpose should be permitted to protect FmHA security, and; the State director has approved such action in advance. No such expenses may be allowed for a period of more than 1 year. Ordinarily it is expected that such expenses will be paid from cash contributions, membership fees, dues, assessments, or taxes.

(f) *Paying interest.* Pay interest installments when such installments cannot be deferred as authorized by § 1823.256(c) until such time as the facility is generating sufficient revenue to be self-supporting in accordance with the following:

(1) *Amount.* The amount of such funds will not exceed the amount of interest which will accrue on the loan from the estimated date of loan closing to a date not beyond the end of the second full calendar year after the estimated loan closing date, when revenues or tax receipts will not be sufficient or collectible in time to pay for such accrued interest. However, the State director may authorize the use of loan funds to pay interest for a longer period with prior approval of the national office.

(2) *Direct loans.* Funds will not be used to pay interest except in those cases where State statutes preclude the deferment of interest payments.

(3) *Insured loans.* Funds may be included to pay interest except in those cases where the loan is being made by a lender who is willing to make the loan on a deferred interest basis.

(g) *Obligations incurred before loan closing.* When an applicant files an application for assistance, the county supervisor will advise the applicant that construction work must not be started and obligations for such work or materials and obligations for other purposes must not be incurred before the loan is closed. If the applicant nevertheless wishes to proceed before closing because of emergency conditions, it may request permission from the State Director to pay such obligations if a loan is made.

(1) Upon receipt of such a request the State Director will determine whether:

(i) A necessity exists for incurring obligations before loan closing.

(ii) The obligations will be incurred for authorized loan purposes.

(iii) Contract documents have been approved by FmHA.

(iv) The association has the legal authority to incur the obligations at the time proposed.

(v) Payment of the debts will remove any basis for any mechanic's, materialmen's or other liens that may attach to the security property.

(2) If the State Director finds that all the conditions under this subpart are met, he may give the applicant written permission for the payment of such obligations from loan funds if a loan is closed. His letter will specifically state that the permission granted is on the condition that the FmHA is not committed to make a loan and assume no responsibility for any obligation incurred by the applicant because of the permission granted, and that the applicant must subsequently meet all FmHA requirements for the loan.

(h) *Purchase existing facilities.* Purchase an existing facility when it is determined that such purchase is necessary to provide efficient service through an association-owned and operated facility, or the present owner is either unwilling or unable to make needed enlargements, improvements, or extensions.

(i) *Refinancing.* Refinance debts incurred by or on behalf of an association prior to an application for a loan when all of the following conditions exist:

(1) The debts were incurred for purposes authorized under this subpart and Subparts B and H of this part.

(2) Arrangements cannot be made with the creditors to extend or modify the terms of the debt so that a sound basis will exist for making a loan.

(3) The prior approval of the National Office has been obtained when it is proposed that the amount to be advanced for refinancing will exceed 50 percent of the total loan.

(j) *Limitations.* The use of loan funds is limited in accordance with the following:

(1) [Reserved]

(2) *Purpose.* Loan may not be used to:

(i) Pay any annually recurring operation and maintenance expenses. This does not preclude use of loan funds for the purpose named in paragraph (e) of this section.

(ii) Construct or repair electric generating plants, electric transmission lines or gas distribution lines to provide services for commercial sale.

(iii) Purchase fire trucks, hoses, and other firefighting equipment or construct housing for such equipment, except as provided in Subpart H of this part.

(iv) Pay rental for the use of equipment, machinery, or other property owned by the association.

(v) Develop facilities when the primary purpose of such facilities is to promote speculation, acquire or develop land for sale, or develop new subdivisions.

(vi) Construct buildings and facilities beyond those which are moderate in cost and design.

(7 U.S.C. 1989; delegation of authority by the Sec. of Agr., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[35 FR 15091, Sept. 29, 1970, as amended at 38 FR 8663, Apr. 5, 1973; 42 FR 17089, Mar. 31, 1977]

§ 1823.254 Loans to tax-exempt public body applicants and preparation and handling of bonds.

For regulations pertaining to the sale of bonds and notes for tax-exempt public body-type applicants, security for loans to tax-exempt public body borrowers, and the preparation and processing of bonds, see Subpart A of this part. However, bonds evidencing obligations to repay loans processed under this subpart are not subject to the requirements of §§ 1823.3(a)(3) and 1823.25(c).

§ 1823.255 Security.

All loans to associations will be secured in a manner which will adequately protect the interest of the FmHA until the loan is paid in full. Loans will be secured in accordance with requirements of the applicable subpart of this part for the type of loan being made and the following:

(a) A lien will be taken on the interest of the applicant in all land easements, rights-of-way, water rights, and similar property rights used, or to be used, in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not feasible to obtain a lien on such land rights (such as land rights obtained from Federal or local governmental agencies and from railroads), and the State Director determines that the interest of the FmHA otherwise is adequately secured, the lien requirement may be omitted as to such land rights. In those instances where such property rights have not been legally perfected, it will be the responsibility of the applicant to obtain and record such releases, consents, subordinations to such property rights from holders of outstanding liens, or other instruments, as it determines, with the advice of its attorney, are necessary for the construction, operation, and maintenance of the facility. When easements only are obtainable on sites for structures such as reservoirs and pumping stations, releases, consents, or subordinations may be required by the FmHA. Provision will be made for the applicant to pay from its own funds for any excess installation costs resulting from a failure to obtain adequate land, rights-of-way or subordinations.

(1) In those cases where a lien on the leasehold interest of the borrower in a leasehold from a private party will represent the principal security for the loan, unless prior written approval from the National Office for a different arrangement is obtained, the lease must provide for:

(i) An unexpired term at least 50 percent longer than the repayment period of the loan.

(ii) The borrower's interest will not be subject to summary forfeiture or cancellation.

(iii) The right of FmHA to foreclose its security; to bid at foreclosure sales; to accept voluntary conveyance of the security in lieu of foreclosure; and should the leasehold be acquired by FmHA through foreclosure, voluntary conveyance, abandonment, or otherwise, to occupy the property, sublet it, or to sell it for cash or credit.

(iv) The right of the borrower to sell or otherwise transfer the leasehold.

(v) Sufficient advance notice (at least 60 days) to FmHA of the lessor's intentions to cancel, terminate, or foreclose upon the lease, so as to permit FmHA to take appropriate action.

(b) Where the loan is approved for the acquisition of real property subject to an outstanding lien indebtedness, the next highest priority lien obtainable will be taken.

(c) No lien will be taken on the personal property owned at the time of loan approval or acquired with loan funds or otherwise, except when it is deemed necessary to take a lien on such personal property to provide adequate security for the FmHA.

(d) Assignments of association income will be taken and perfected if legally permissible.

(e) Promissory notes, stock or membership subscription agreements, individual member's liability agreements, or other evidences of debt, as well as mortgages or other security instruments encumbering the private property of members of the association may be pledged or assigned to the FmHA as additional security in any case in which the interest of the FmHA will not be otherwise adequately protected.

§ 1823.256 Loan terms.

(a) *Repayment period.* (1) Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note(s) or bond(s). In addition, no repayment period will exceed any statutory limitation on an association's borrowing authority, nor will it exceed the useful life of the facility to be financed.

(2) In those cases where loans are primarily for the purchase of equipment such as tractors, trucks, and earth moving equipment and such equipment represents the principal security for the loan, the repayment period may not exceed 7 years from the date of loan closing except that the State Director may authorize such a loan to be scheduled for repayment up to 10 years where special justification exists.

(3) Repayments will be scheduled annually beginning with January 1 following the date of loan closing or on the first January 1 following the end of any approved deferment period unless an annual due date other than January 1 is required by State statute or upon prior written authorization of the National Office.

(b) *Repayment schedules.* (1) Amortized installments will be required. In cases where the payment of interest has been deferred, all collections will be applied to interest until such interest has been paid. Also, when a full installment is not paid when due, the payment made will be applied first to accrued interest.

(2) Income to be received by the association from payments earned under U.S. Department of Agriculture (USDA) programs for shifts in land use and the conservation and use of land and water accomplished in part or in whole with loan funds will be taken into account in scheduling loan repayments.

(c) *Deferred payments.* Principal or interest payments, or both, may be deferred in whole or in part for a period not to exceed the end of the second full calendar year after the estimated date of loan closing. If for any reason it appears necessary to permit a longer period of deferment, the State Director may authorize such deferment with the prior approval of the National Office.

(1) Deferments of principal or interest will not be used to:

(i) Postpone the levying of taxes or assessments.

(ii) Delay the collection of the full rates which the association has agreed to charge users for its services as soon as major benefits or the improvements are available to those users.

(iii) Create reserves for normal operation and maintenance.

(iv) Make any capital improvements except those considered by the State Director to be essential to the repayment of the loan or to the obtaining of adequate security therefor and upon prior written approval of the National Office.

(v) Accelerate the payment of other debts.

(vi) Permit making a loan when repayment will depend upon anticipated income from service to users who are not located in the service area at the time the loan is closed or who have not at that time agreed to accept and pay for such service.

(2) Proposed deferments will be consistent with provisions of State or local laws affecting the creation and repayment of debts by borrowers.

(3) Interest deferments on insured loans will be scheduled only when there is a lender willing to advance funds on this basis.

(d) *Interest rates.* Current information regarding interest rates may be obtained from any county or State office of the FmHA or from its National Office at 14th and Independence Avenue SW., Washington, D.C. 20250.

§ 1823.257 Reserves.

Each borrower will be required to establish and maintain reserves for delinquent accounts sufficient to assure that loan installments will be paid on time. Reserve accounts also will be established for emergency maintenance and for extensions to facilities. In those cases where statutes provide for extinguishing assessment liens of public bodies when properties subject to such liens are sold for delinquent State and local taxes, special reserves will be established and maintained for the protection of the borrower's lien of assessment. Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents and in assessments, tax levies, or rates charged for services.

(a) *Association dependent on revenues.* Associations dependent on revenues other than taxes or assessments ordinarily will plan their reserve program to provide for a total reserve in an amount equal at least to one average loan installment. It also is expected that such reserve will be accumulated at the rate of at least one-tenth of the total each year until the desired level is reached.

(b) *Handling reserves.* Reserves may be invested in time deposits or savings accounts or organizations insured by the Federal Deposit Insurance Corporation or Federal Home Loan Bank Insurance Corporation, or obligations of the United States which may be converted readily into cash. Investments and income therefrom will always be a part of the particular reserve fund from which they were made. Reserves also may be used to make additional payments on debts owed to FmHA if such action is not in conflict with State law or regulation and is approved by the State Director.

§ 1823.258 Insurance and bonding.

Property insurance, workman's compensation insurance, liability insurance, and fidelity bonds will be required as follows:

(a) *Property insurance.* In like manner as provided in Part 1806 of this chapter, fire and extended coverage will be required on all above ground structures, including association-owned equipment and machinery housed therein.

(b) Workman's compensation insurance for all its employees in accordance with appropriate State laws.

(c) *Liability and property damage insurance.* Requirements for liability insurance will be carefully and thoroughly considered in connection with each project financed by a loan. Public liability and property damage insur ance amounts will be established accordingly and obtained not later than the time of loan closing. If the association owns trucks, tractors, or other vehicles that frequently are driven over public highways, public liability and property damage insurance will be required.

(d) *Fidelity bonds.* (1) The association will provide fidelity bond coverage for the positions of officials (not necessarily including employees such as checkstand operators, caddies, concession operators, and other such employees) entrusted with the receipt and disbursement of its funds and the custody of any property. The amount of the bond will be at least equal to the maximum amount of money that the association will have on hand at any one time exclusive of loan funds deposited in a supervised bank account. If permitted by State laws, the United States will be named as co-obligee in the bond. Corporate fidelity bonds will be obtained except that in unusual circumstances the National Office may give prior approval to cash bonds. Form FmHA 440-24, "Position Fidelity Schedule Bond," may be used if permitted by the State law.

(2) In cases where the State Director determines that the cost of fidelity bonds in amounts sufficient to cover all accumulated reserves is excessive, the State Director may approve the use of a fidelity bond in an amount equal to the amount of funds collected by the association in 1 year and the depositing of reserves in a special account requiring the countersignature of the County Supervisor for withdrawals. In such cases, the State Director will request the assistance of the Office of the General Counsel (OGC) in preparation of the deposit agreement.

(e) *Public body-type organization.* Public body-type organizations receiving assistance as authorized in this subpart will provide insurance and bonds as required insofar as they are able to do so under applicable State statutes and regulations.

§ 1823.259 Coordination with State and local agencies.

Projects financed in whole or in part with association loan funds will be coordinated with appropriate State and local agencies in accordance with the following:

(a) *Compliance with special laws and regulations.* Applicants will be required to comply with State and local laws and any regulatory commission rules or regulations pertaining to:

(1) Organization of the association and its authority to install, operate, and maintain the facilities proposed to be constructed.

(2) Borrowing of money, giving security therefor, and raising revenues for the repayment thereof.

(3) Appropriation, diversion, storage and use of water, and disposal of excess water. All of the rights of any landowners, appropriators, or users of water from any source will be fully honored in all respects as they may be affected by facilities to be installed. If, under the provisions of State law, notice of the proposed diversion or storage of water may be filed in the office of a State official, such notice must be filed by the applicant. Even though such filing may be optional under State law, the record might be of value at some future time to protect the association's right or priority to the use of water. An applicant must furnish evidence to provide reasonable assurance that its water rights will be or have been properly established, will not interfere with prior vested rights, will likely not be contested or enjoined by other water users or riparian owners, and will be within the provisions of any applicable interstate compact.

(4) Land use zoning.

(5) Permission to construct facilities and the approval of construction plans and specifications by appropriate State and local officials.

(6) Health and sanitation standards.

§ 1823.260 Professional services.

The FmHA may provide advice and consultation in connection with preliminary determinations regarding engineering feasibility, economic soundness, cost estimates, organization, financing, and management. Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, and development of proposals for organization and financing. The County Supervisor will inform the association of the services it must provide. Required services will be obtained from qualified professionals; however, applicants should be cautioned against entering into agreements for professional services until they have completed necessary preliminary surveys and determinations. To the extent practicable, recommendations of the Forest Service, Federal Extension Service, Soil Conservation Service (SCS), Bureau of Land Management, Bureau of Reclamation, Agricultural Stabilization and Conservation Service (ASCS), Fish and Wildlife Service, and other agencies should be considered in planning the development.

(a) *Selection of architect or engineer.* (1) The association will be responsible for selecting its architect or engineer. FmHA personnel are prohibited from recommending any particular architect or engineer or firm. The County Supervisor may provide applicants, on their request, a list of architects or engineers who have worked successfully on other similar facilities in the area.

(2) Written contracts will be required for architectural and engineering services. Such contracts, including the amount of the fee to be paid, will be reviewed and, if satisfactory, they will be approved by FmHA by signing after execution by the applicant and architect or engineer. State directors and members of their staffs who have been designated in writing are authorized to approve agreements with engineers and architects for FmHA. Form FmHA 442-19, "Agreement for Engineering Services," may be modified as appropriate for use in connection with projects financed by loans being processed under this subpart.

(b) *Associations unable to provide planning assistance.* If an applicant does not have the resources to pay for project planning work, cannot arrange to do it on credit, has no qualified personnel to do such work, and the technical assistance required is not available from other Federal or other public agencies, FmHA may provide the necessary planning assistance by utilizing the services of available FmHA personnel.

(c) *Selection of legal counsel.* The association will be responsible for selecting its legal counsel, and FmHA personnel are prohibited from recommending a particular attorney or firm of attorneys. The applicant may select any attorney who is qualified and agreeable to performing the required legal services. A form entitled "Legal Services Agreement" for use by the organization and its attorney is available at all FmHA offices and may be used as a guide for preparation of legal services agreements.

§ 1823.261 Facility control.

Each association must obtain such control over its project area as will be necessary to accomplish its objectives. The control may be obtained by means of deeds, satisfactory contracts, permits, and leases with private landowners or public agencies having appropriate jurisdiction.

§ 1823.262 Preparation of appraisal reports.

Reports will be prepared using Form FmHA 422-1, "Appraisal Report (Farm Tract)," with appropriate supplements and modified to recommend the present market value. Such appraisal reports will consider the use for which the property is intended and will be made on an "as is" rather than a "developed" basis. Appraisal reports will be prepared by qualified FmHA appraisers except that no employee may make an appraisal in connection with a loan which he will approve.

§ 1823.263 Affect of special programs—regulations.

Loans to which this subpart pertains are affected as shown below by certain special programs, regulations, and laws.

(a) *Equal opportunity in employment for construction.* This applies to all loans which may involve construction work exceeding $10,000 to be paid for in whole or in part with FmHA loan funds. (See Subpart E of Part 1901 of this chapter.)

(b) *Pledging collateral for deposits of funds in supervised bank accounts.*

Collateral must be pledged for all supervised bank accounts in excess of $100,000 for projects being financed under this subpart.

(c) *Nondiscrimination by recipients of FmHA financial assistance in accordance with Title VI of the Civil Rights Act of 1964.* This applies to direct loans and loans made from the ACIF being processed under this subpart. (See Subpart E of Part 1901 of this chapter.)

(d) *Location of facilities in flood plain area.* Executive Order 11296, dated August 10, 1966, requires that all executive agencies responsible for administration of Federal grant, loan, or mortgage insurance programs involving the construction of buildings, structures, and other facilities, evaluate flood hazards, and, as far as practicable, preclude the use of flood plains. In the event it is necessary to consider locating facilities in a flood plain area, the State Director will evaluate the proposal from the standpoint of special design and additional initial cost as well as maintenance costs. Facilities may be located in flood plain areas only after a careful evaluation of the proposal by the State Director and a determination that flood damage will not likely occur. Normally, the Corps of Engineers or the Soil Conservation Service of the U.S. Department of Agriculture will be in a position to provide information concerning the likelihood of flooding and possibility of damage to the proposed facility. The evaluation and determination will be recorded and made a part of the docket.

[35 FR 15091, Sept. 29, 1970, as amended at 36 FR 21666, Nov. 12, 1971; 46 FR 36106, July 14, 1981]

§ 1823.264 Applications.

(a) Each applicant will make application on Standard Form 101, "Application—Federal Assistance for Public Works and Facility-Type Projects," promulgated by Bureau of the Budget Circular No. A-75, Revised, dated December 29, 1967. The applicant need not be legally organized to file an application.

(b) The County Supervisor, upon receipt of Standard Form 101 will immediately complete the reverse side and forward one copy to the State Director and proceed with docket development and assembly. The date that the application is filed will be entered on the reverse side of the application form near the signature line.

§ 1823.265 County committee recommendations.

Just as soon as adequate information has been assembled on the association's application to enable the county committee to make its recommendations, the proposal will be presented to the committee by the County Supervisor. Committee recommendations will be made on Form FmHA 440-2, "County Committee Certification or Recommendation."

§ 1823.266 Dockets.

(a) *Assembly.* Dockets ordinarily will be assembled to include all forms and documents required by the applicable policy subpart of this part. Dockets for projects for which preparation of complete development plans including construction contract documents will be relatively expensive may be initially submitted without complete construction documents and without all legal work completed. In such cases, the docket will include a preliminary engineering report prepared in accordance with Part 1942, Subpart A. Although legal work in connection with applicant organization and adoption of rules and regulations may not be complete, the proposed form of documents such as articles of incorporation, bylaws, rules and regulations, and other similar items will be included in the docket.

(b) *Coordinating docket preparation.* The County Supervisor is responsible for coordinating the development of association dockets. In order to successfully carry out this responsibility, he must make maximum use of conferences with applicant representatives, checklists designed to provide for continuous monitoring of progress in docket development, and other measures to assure effective liaison and communication between him, the applicant, and the applicant's technical and professional consultants.

(1) Each applicant should be requested to name an individual and an alternate whom the County Supervisor may contact in connection with association business. These individuals should be members of the applicant's governing body or organizing committee—not the applicant's engineer, architect, or attorney. The County Supervisor must accomplish his work with the applicant through the designated representative, except where otherwise provided in applicable subparts of this part.

(2) As soon as the County Supervisor has had an opportunity to make a preliminary determination regarding applicant eligibility and project feasibility, he will discuss matters such as application processing, the applicant's need for an engineer, architect, or other consultant, and an attorney, and other such items with the governing body or organizing committee. At this meeting, the County Supervisor will initiate use of a processing checklist for use in guiding docket preparation and establishing a time schedule for completion of items. Immediately following the discussion, he will confirm by letter to the applicant the decisions made and forward a copy of the processing checklist. He will retain a copy of the processing checklist and forward one copy along with a copy of his confirmation letter to the State office through his District Supervisor. The District Supervisor will assist each of his County Supervisors in conducting such conferences until it is established that the County Supervisor likely will be able to successfully carry them on without assistance.

(3) As soon as the applicant has selected its engineer or architect and prior to commencing facility planning, the County Supervisor will hold a "preplanning" conference with members of the association's governing body or organizing committee and its engineer or architect and other interested parties. At this conference, preparation of the preliminary engineering report or complete development plans, whichever is appropriate, will be discussed in detail to assure that the applicant and its engineer or architect understand FmHA design policies, as well as their respective responsibilities. Until County Supervisors are adequately trained in this activity, they will be assisted by District Supervisors and State Office personnel. The processing checklist will be updated and extended to include additional items discussed at the conference. Again, decisions reached will be confirmed by letter and the processing checklist extended. State Directors will develop handbooks and other guides for use of applicants and their attorneys and engineers or architects. Use and content of such handbooks will be discussed at the preplanning conference and handed to the applicant representatives, attorney, and engineer or architect. State Directors will develop separate handbooks for use with recreation, grazing, and other projects.

(4) As the application is being processed and the need develops for additional conferences, the County Supervisor will call such conferences, extend and update the processing checklist, and confirm by letter the decisions made.

(5) All processing checklists will be submitted to the State office through the district supervisor. If an extended and updated checklist for each application in process has not been submitted during the month, it will be submitted no later than the close of business on the last working day of the month. On receipt of an extended or updated checklist, the State Director will return to the County Supervisor the checklist on hand. This copy may be used by the County Supervisor for future submissions. Form FmHA 442-39, "Processing Checklist (Other than Public Bodies)," and Form FmHA 442-40, "Processing Checklist (Tax-Exempt Public Bodies)," may be used for the processing checklist or if desired, State Directors may require the use of State forms.

(7 U.S.C. 1989; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[35 FR 15091, Sept. 29, 1970, as amended at 44 FR 6353, Feb. 1, 1979]

§ 1823.267 Review and approval.

(a) *Approval official review.* The loan approval official will review the docket to determine that:

(1) The county committee's recommendation has been properly completed and signed by at least two committeemen, neither of whom is a member of the applicant association.

(2) The applicant is eligible.

(3) The funds are requested for authorized purposes.

(4) The proposal is sound.

(5) All other pertinent requirements are met or apparently can be met.

(6) The facility has been planned and designed within the criteria established by Subpart B of Part 1804 of this chapter.

(7) Adequate credit at reasonable rates and terms is not available from other sources.

(b) *Letter of conditions.* If the proposal appears to be sound and proper, the loan approval official will prepare a letter of conditions listing all requirements which the applicant must agree to meet within a specified time before the application will receive further consideration and any loan approved. All letters of condition will be addressed to the applicant, signed by the County Supervisor, and mailed or handed to the appropriate applicant representatives by the County Supervisor.

(1) Requirements listed in the letter will include those relative to:

(i) Maximum amount of loan which may be considered.

(ii) Repayment schedule

(iii) Contributions required of applicant users or members.

(iv) Security requirements.

(v) Title to property.

(vi) Organization.

(vii) Business operations.

(viii) Insurance and bonding.

(ix) Construction contract documents and bidding.

(x) Accounts, records, and audit reports required.

(xi) Number of users (members).

(xii) Advertising for private lenders by tax-exempt public body applicants.

(xiii) Closing instructions.

(xiv) Other requirements which must be met.

(2) Each letter of condition will contain the following as the first three paragraphs:

> This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application and which must be met before the loan can be closed.
>
> This letter is not to be considered as a loan approval or as a representation as to the availability of funds. The docket may be completed on the basis of a loan not to exceed $——.
>
> Please complete and return the attached Form FmHA 442-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

(c) *Docket processing.* Docket processing will be accomplished expeditiously and in accordance with the following paragraphs and the procedures established by the State Director.

(1) If the County Supervisor is authorized to approve the loan he will prepare the letter of conditions and proceed as required in paragraph (c)(3)(iii) of this section.

(2) If the proposal is beyond the County Supervisor's approval authority, but within the District Supervisor's approval authority, the County Supervisor will forward the docket to the District Supervisor who will review it, and if found in order, prepare the letter of conditions, and forward the unsigned letter and the docket to the County Supervisor along with a memorandum authorizing the County Supervisor to sign the letter. The County Supervisor will proceed in accordance with paragraph (c)(3)(iii) of this section.

(3) Proposals beyond the approval authority of the District Supervisor will be forwarded by the County Supervisor direct to the State office where they will be reviewed, and if found in order, processed as follows:

(i) If the proposal is within the State Director's approval authority, the letter of conditions will be prepared and forwarded to the County Supervisor along with a memorandum authorizing the County Supervisor to sign the letter of conditions. The County Supervisor will proceed as required in paragraph (c)(3)(iii) of this section.

(ii) If national office authorization is required for loan approval, the State Director will:

(*a*) Forward to the national office the following material assembled in the following order from top to bottom:

(*1*) Transmittal memorandum including recommendations.

(*2*) Proposed letter of conditions.

(*3*) Original plus one copy of the project summary (shift-in-land-use, recreation, or other).

(*4*) Fiscal documents including budget and financial statements.

(*5*) Organizational documents such as articles of incorporation or charter.

(*6*) Resolutions, ordinances, or other form of agreement.

(*7*) Rules of operation such as bylaws.

(*8*) Preliminary engineering report.

(*9*) Other forms and documents required.

(*b*) Send the County Supervisor and District Supervisor an information copy of his transmittal memorandum.

(*c*) On receipt of national office authorization to approve, the State Director and County Supervisor will proceed as in paragraph (c)(3)(v) of this section.

(iii) The County Supervisor will sign the letter of conditions, discuss its requirements with applicant representatives, and afford them an opportunity to execute Form FmHA 442-46. If the applicant declines to execute Form FmHA 442-46, the County Supervisor will immediately notify the State Director and provide him with complete information as to the reasons for such declination. If the applicant executes Form FmHA 442-46, the County Supervisor will complete Form(s) FmHA 442-14, "Association Project Fund Analysis," and the original and four copies of (each) Form FmHA 442-14, and Form FmHA 440-1 to the State Director.

(d) *Obligating funds.* State Directors may obligate funds when they are available and in accordance with the following:

(1) Funds may not be obligated until the applicant has legal authority to contract for a loan and enter into the required agreements.

(2) If approval was authorized by the National Office, a copy of the memorandum authorizing approval will be attached to the original of Form FmHA 440-1.

(3) The State Director will request that funds be obligated for the project by preparing Form FmHA 440-1 in an original and four copies.

The State Director will sign the original and one copy and conform two copies. The original and one conformed copy will be forwarded to the Finance Office and the other copies held pending notification from the Finance Office that funds are available. The Finance Office will reserve funds for the project and notify the State Director of such reservation by forwarding Form FmHA 440-57, "Acknowledgment of Obligated Funds/Check Request." Unless the State Director notifies the Finance Office to cancel the reservation or to complete the obligation at an earlier date, the Finance Office will complete the obligation on the 15th working day following the date of Form FmHA 440-57. The State Director will time his reports to the National Office as required by FmHA regulations in order that notification required by that regulation may be made and the applicant is informed of loan approval not later than the date of obligation. Notice of approval to the applicant will be accomplished by providing the applicant with the signed copy of Form FmHA 440-1. The State Director will record the actual date of applicant notification on the remaining copy of Form FmHA 440-1 and make such copy a permanent part of the County Office project file.

[35 FR 15091, Sept. 29, 1970, as amended at 41 FR 7489, Feb. 19, 1976]

§ 1823.268 Title to pledged assets.

The association will provide evidence of title satisfactory to the FmHA for all assets which will constitute security for the loan.

(a) Whenever real estate other than easements, right-of-way, or similar interests will be taken as security, the applicant should furnish the County Supervisor with a copy of its deed or purchase contract and any mortgage or other lien on the property offered as security. If water stock is being offered as security for the loan, the applicant should furnish the stock certificate. The other title evidence furnished will be one of the following:

(1) An opinion of title prepared by the applicant's attorney. This opinion may be on Forms FmHA 427-9, "Preliminary Title Opinion," and FmHA 427-10, "Final Title Opinion." The opinion will be based upon an examination of the public records or a current abstract of title, or a combination thereof, in accordance with the practice in the community. If based on an abstract of title, the abstract and abstractor's certificate must cover all matters below. If the abstractor's certificate or certificates are limited in any way, they must be supplemented by the attorney's own examination of records or other competent evidence of title. The opinion of title will set forth the ownership and condition of the title to the land, the manner in which title was acquired, and will list all unreleased mortgages, judgments, unpaid taxes, liens or other encumbrances, pending suits, reservations, exceptions, leases, easements, and any other outstanding interest. The title search must cover such period as the examining attorney determines necessary to issue his opinion as to whether the title is good and marketable according to title examination standards prevailing in the area, except that title examination need not go back beyond a Farm Ownership, Rural Housing, or individual Soil and Water (not Water Facilities) security instruments. If the examining attorney finds an FmHA security instrument in the chain of title and is not certain that it is one of the types mentioned in the preceding sentence, he may consult the county supervisor.

(2) A policy of title insurance obtained from a title insurance company approved by FmHA.

(b) Applicants will be responsible for obtaining adequate, continuous and valid rights-of-way for the construction, operation, and maintenance of its facilities.

(1) The applicant will submit the following documentary evidence to the FmHA:

(i) A copy of the form of right-of-way instrument to be used if it differs from Form FmHA 442-20, "Right-of-Way Easement." Rights-of-way with restrictive provisions should be accepted only in very unusual circumstances. Whenever the form of the instrument differs from Form FmHA 442-20 or contains special provisions that are required by either the applicant or the grantor, copies of such instruments will be submitted to the FmHA for review prior to acceptance and recording. Either specific rights-of-way containing a legal property description or a centerline description of the rights-of-way, or general rights-of-way containing only a description of the tract or parcel of land affected may be used.

(ii) A certificate by a duly authorized official of the applicant that it has obtained and presently hold adequate and sufficient legal title to all rights-of-way, permits, licenses, and other authorizations deemed necessary by the applicant, its engineer, and its attorney for an uninterrupted right-of-way for the construction, operation, and maintenance of the facilities. Use Form FmHA 442-21, "Right-of-Way Certificate."

(iii) A right-of-way map showing the location of all structures, pipelines, ditches, and the like. When completed, the map should show that the rights-of-way are continuous with no gaps. Rights-of-way acquired by use or adverse possession will be shown by some distinctive color. This map will be prepared by the applicant's engineer and it will bear the signature of the engineer and the presiding official or the applicant.

(iv) An opinion of the applicant's attorney relating to the adequacy and legality of the rights-of-way covered by the right-of-way certificate and right-of-way map. Use Form FmHA 442-22, "Opinion of Counsel Relative to Right-of-Way," to the extent possible.

(2) When a lien will be taken on a site for structures and the applicant is able to obtain only a right-of-way or easement on such site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney, showing the ownership of the land and all mortgages or other liens, defects, or encumbrances,

if any. The title report will cover the same period of time prescribed in paragraph (a)(1) of this section. Consents, releases, or subordinations will be obtained from the holders of outstanding liens or mortgages as may be required by the FmHA.

(c) When a mortgage or an assignment will be taken on water rights owned or to be acquired by the association, the following will be furnished as applicable:

(1) A statement by the association's attorney regarding the nature of the water right owned or to be acquired by the applicant (conveyance of title, appropriation and decree, application and permit, public notice of appropriation and use, and so forth).

(2) A copy of any contract with another company or municipality to supply water or stock certificate in another company representing the right to receive water.

(d) When liens will be taken on chattel property, the following will be furnished:

(1) Description of the property for use in preparing security instruments.

(2) Form FmHA 440-13, "Report of Lien Search," or similar form prepared in accordance with the procedures issued by the State office prescribing the use of such form for operating loans.

(e) If the information supplied is not consistent with information in the report on application, the applicant must furnish a full explanation (satisfactory to the FmHA) of the variations. The applicant will be required to furnish such additional title evidence as may be called for by the OGC.

(f) All title evidence other than the opinion of title, mortgage title insurance policy, and water stock certificates will be returned to the borrower when the loan has been closed. The opinion of title or title insurance policy and any water stock certificates will be retained in the borrower's county office case folder.

§ 1823.269 Title to unpledged land rights.

Applicants whose land rights are not to be pledged as security will submit evidence of title in accordance with § 1823.268(b)(1)(ii) and (iii).

§ 1823.270 Loan closing instructions.

Loans will be closed in accordance with instructions issued by the OGC or the State director.

(a) *Closing instructions issued by the State Director.* (1) State Directors may, on an individual loan basis, authorize loans to be closed without OGC closing instructions, prepared for that specific loan when:

(i) Such loans are secured only by a first lien on real estate and an assignment of revenue, or by a first lien on chattels and an assignment of revenue.

(ii) The applicant is providing, where real estate is to serve as security, an acceptable mortgagee title insurance policy issued by a company approved in accordance with Part 1807 of this chapter or an opinion of title and final title of opinion prepared by the association's attorney using Forms FmHA 427-9 and FmHA 427-10.

(iii) Evidence of organization such as articles of incorporation or other evidence meets FmHA requirements.

(iv) For an existing corporation, the applicant is in good standing as evidenced by a "Certificate of Good Standing" or similar statement from appropriate State officials or there is other acceptable evidence of good standing.

(v) The applicant's operating rules and regulations such as bylaws or other forms of rules and regulations, meet FmHA requirements.

(vi) The loan will be closed with the assistance of the association's attorney.

(vii) Regulations issued by the State Office pertaining to loan closing have been found acceptable by the regional attorney and approved by the National Office.

(viii) There is nothing significantly unusual about the loan which would indicate that it should be reviewed by OGC.

(2) State Directors will furnish the county supervisor with instructions necessary to properly close the loan when authorizing loans to be closed as provided in paragraph (a)(1) of this section. Ordinarily, most such closing instructions would be contained in regulations issued by the State Office prepared in accordance with para-

graph (a)(1)(vii) of this section with the individual instructions limited to those items pertaining to the specific loan.

(b) *Closing instructions issued by the OGC.* Loans which cannot be closed in accordance with paragraph (a)(1) of this section will be closed on the basis of instructions issued by OGC. State directors will, when requesting closing instructions from OGC, also request advice as to whether OGC feels it necessary to return evidence of closing for its review and final opinion.

§ 1823.271 Preparation for loan closing and ordering loan checks.

(a) *Preparation for closing.* Upon receipt of closing instructions, the County Supervisor will:

(1) Discuss with the association's governing body and its architect or engineer and attorney and other appropriate association representatives the requirements contained therein and any actions necessary to proceed with closing.

(2) Hand the association officers three copies of the closing instructions.

(3) Plan carefully with association officers the timing of all steps to be taken before closing.

(b) *Determining whether project can be constructed within estimate.* If it appears that the applicant will be able and is ready to meet the closing requirements, the State Director must determine whether the facility likely can be constructed for an amount within the estimate. In order to make this determination, he may require that construction contract bids be invited and opened prior to further processing. This will be accomplished in accordance with the requirements of Part 1942, Subpart A.

(c) *Ordering loan checks.* (1) Checks will not be ordered until:

(i) The association has complied with approval conditions and closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto.

(ii) The association is ready to start construction or proceed with development.

(iii) The association is reasonably sure that no increase or decrease in the amount of the loan is contemplated. If it becomes evident on or before closing that the amount of the funds should be substantially decreased or increased, the county supervisor will request that all distributed docket forms be returned to him for revision and proceed with the revised docket.

(iv) Form FmHA 440-57, has been received from the Finance Office as stated in § 1823.267(d)(3).

(2) In those cases where relatively large amounts of funds are to be expended for purchase of real estate or for other reasons at the time of closing, separate checks for such purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing such loan funds in the supervised bank account and reduce the amount of required collateral.

(3) Multiple advances will be used for all loans in excess of $50,000. Advances will be made only as needed to cover disbursements required by the borrower over a 30 day period. Normally, the advances should not exceed 24 in number nor extend longer than two years beyond loan closing. Normally, the retained percentage withheld from the contractor to assure that construction will be completed in accordance with the contract documents will be included in the last advance.

(i) Part 1942, Subpart A, contain instructions for making multiple advances to public bodies.

(ii) The following will apply when a nonpublic body will evidence its indebtedness by using Form FmHA 440-22, "Promissory Note (Association or Organization)," or similar instrument.

(A) One note will be used to disburse the total amount of the loan.

(B) Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, rights-of-way, and land, legal, engineering, and other expenses as needed. The association will prepare Form FmHA 440-11, "Estimate of Funds Needed for 30 Day Period Commencing," to show the amount of funds needed during the 30 day period. This form will be approved by the County Supervisor. After the County Supervisor determines that the estimate prepared by the association is adequate, he will request the advance by executing and forwarding to the Finance Office Form FmHA 440-57. For instance, with a loan of $200,000, advances will be made as follows: assuming that the loan will be closed on July 1, the association will complete Form FmHA 440-11 in sufficient time so that funds will be available on the day of loan closing. The estimate should be broken down for the first advance in a manner similar to the following:

Construction	$43,000
Land acquisition	10,000
Engineering	14,000
Legal	3,000
Total	70,000

An advance in the amount of $70,000 would then be available on July 1, the day of loan closing. The second advance will also be based on the association's estimate prepared on Form FmHA 440-11, and will be prepared in sufficient time so that the estimated amount of funds will be available on August 1. This estimate of funds might be broken down as follows:

Construction	$19,600
Engineering fees	400
Total	20,000

The same routine will be followed for each advance until the project is completed. In this example, the initial principal payment will be deferred until the second January 1 following loan closing.

(iii) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(d) *Borrowers receiving funds from other agencies.* Before closing the FmHA loan, County Supervisors will be sure that FmHA borrowers expecting funds from other agencies such as ASCS, SCS, and others for use in completing projects being partially financed with FmHA funds have evidence that funds from such other agencies will be available at the time needed for construction of the project. If there are any questions regarding the availability of such funds, the County Supervisor will report the complete circumstances to the State Director and request instructions for proceeding.

(7 U.S.C. 1989; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[35 FR 15091, Sept. 29, 1970, as amended at 41 FR 7489, Feb. 19, 1976; 44 FR 6353, Feb. 1, 1979]

§ 1823.272 Loan closing.

Loans will be closed as soon as possible after receiving the check.

(a) *Authority to execute, file, and record legal instruments.* Property bonded county office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for association loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgments, and other certifications and instruments.

(b) *Preparation of mortgages.* Unless otherwise required by State law, or an exception is approved by the State Director with the advice of OGC, only one mortgage will be taken, even though the indebtedness is to be evidenced by more than one note.

(c) *Preparation of promissory notes and bonds.* Notes and bonds will be completed on and dated the day of loan closing. The amount of each note or bond will be in multiples of $100.

(1) Form FmHA 440-22, "Promissory Note (Insured Loan to Non-Tax-Exempt Association or Organization)," will be used for insured loans to an association whose obligations bear interest which is not exempt from Federal income taxation.

(2) Form FmHA 440-23, "Promissory Note (Direct Loan to Association or Organization)," will be used for direct loans.

(d) *Insurance endorsement.* All insured loans to tax-exempt public bodies will be made from the ACIF. For other insured loans where there is a known lender, County Supervisors and State Directors are authorized to endorse notes and to execute insurance endorsements. For insured loans from the insurance funds, the note(s) or bonds will be transferred to the lender and the insurance endorsements executed by the Director, Finance Office, or the Insured Loan Officer, in accordance with procedures established by the National Office. The following action will be taken at loan closing with respect to insured note(s) or bonds where there is a known lender:

(1) *Note(s).* The promissory note(s), Forms FmHA 440-22 or FmHA 440-33 "Promissory Note (Insured Loan to Tax-Exempt Public Body)," whenever legally possible, will be endorsed over to the known lender. Forms FmHA 440-5, "Insurance Endorsement (Insured Loan)," or FmHA 440-30, "Insurance Endorsement (Insured Loan)," will be completed, signed, attached to the note(s) and delivered with the note(s) to the known lender pursuant to Part 1812 of this chapter.

(2) *Warrants and others.* Other instrument(s) evidencing the indebtedness will be handled pursuant to paragraph (d)(1) of this section. Any questions in this regard should be resolved with the assistance of the OGC.

(e) *Obtaining real property insurance.* The association will provide insurance coverage at the time of loan closing in the amounts and types specified in the letter of conditions and provided for in § 1823.258(a).

(f) *Assignments.* Assignments will be prepared in accordance with conditions of loan approval and closing instructions. Assignments based on income from services of equipment will be prepared so as to require income to be remitted on the basis of equipment use.

(g) *Obtaining liability insurance.* The association will provide liability insurance by the time of loan closing in the amount and type specified by the State Director in his memorandum of approval.

(h) *Obtaining fidelity bonds.* The association will provide fidelity bonds by the time of loan closing in the amounts of and covering the positions specified by the State Director in his approval memorandum. If permitted by State law, the "United States of America" will be named as cobligee in the bond. Form FmHA 440-24, "Position Fidelity Schedule Bond," may be used if permitted by State law. Use of Form FmHA 440-24 will usually result in lower rates for this coverage.

(i) *Payment of fees and costs.* Statutory fees and other charges for filing or recording mortgages or other legal instruments and notary and lien search fees incident to loan transactions will be paid by the association from its own funds or from the proceeds of the loan. Whenever cash is accepted by FmHA personnel to be used to pay the filing or recording fees, or the cost of making lien searches, Form FmHA 440-12, "Acknowledgment of Payment for Recording, Line Search, and Releasing Fees," will be executed.

(j) *Distribution of recorded documents.* The originals of the recorded deeds, easements, permits, certificates of water rights, leases, or other contracts and similar documents which are not required by the loan approval official to be held by the FmHA will be returned to the association.

(k) *Posting area guide records.* Any actions to be completed subsequent to loan closing will be recorded on Form FmHA 405-1, "Management System Card—Individual."

(l) *Use of and accountability for funds.* (1) Loan funds and any funds furnished by the borrower to supplement the loan including contributions to purchase major items of equipment, machinery, and furnishings, will be deposited and handled in accordance with Part 1902, Subpart A. The funds so deposited in a supervised bank account are public monies under title 12, section 265, United States Code, because they are subject to control by an employee of the United States, and therefore, if the amount deposited exceeds $100,000 the bank will be required to pledge collateral security for such excess pursuant to Treasury Department Circular No. 176 before the funds are deposited.

(2) If the financial operations of the association are so limited by State laws, or by other special circumstances, that use of a supervised bank account is impossible, loan funds may be deposited in a special bank account without provision for countersignature

of checks or warrants by the County Supervisor. In such cases, arrangements must be agreed upon for the prior approval by the County Supervisor of the bills or vouchers upon which warrants will be drawn so that the necessary control of payments from loan funds can be maintained and records in the FmHA County Office can be kept current. Periodic audits of such accounts should be made by the County Supervisor at such times and in such manner as the State Director will prescribe in the conditions of loan approval, and suitable followups should be established. If the applicable State laws contain specific and mandatory provisions regulating the depositories to be used, the security given by the depository for funds of the association, or the bond required of the association's treasurer, such requirements should be complied with. If, however, there are no such mandatory provisions in the State laws, the State Director should include in his conditions for loan approval requirements for the protection of the loan funds by the depository placing in escrow or pledging sufficient obligations of the United States, or furnishing a good and sufficient bond by a reputable surety company authorized to do business in the State. If other types of protection of the loan funds are proposed, they should be submitted to the Administrator for approval.

(3) Applicant contributions to be used for operation and maintenance expenses and contributions for equipment, machinery and furnishings not to be deposited in a supervised or special bank account in accordance with paragraphs (c)(1) and (2) of this section will be deposited in the appropriate accounts of the applicant. In order to assure that such funds will be used as agreed, the applicant must agree prior to loan closing that checks will be drawn on such accounts only with the concurrence of the County Supervisor.

(4) Checks for direct loans and loans from the ACIF will be handled in accordance with procedures established by the National Office.

(5) If, for any reason, a loan check for an insured loan by a private lender cannot be delivered to the association, it will be returned to the lender with a request for cancellation. When a loan check is lost or destroyed, the County Supervisor will notify the lender immediately. If the association desires that a new check be issued, the lender will be requested to issue a new check.

(6) When a loan check is issued payable jointly to the association and the FmHA, the County Supervisor is authorized to endorse the check on behalf of the FmHA at the time of loan closing as follows:

Endorsed without recourse:

Farmers Home Administration

By ____________________

Title ____________________

The State Director also is authorized to endorse such a check in the same manner. Authority to endorse such checks in no way relates to or modifies the regulations issued by the National Office regarding collection items, or the endorsement of such items.

(7) In those cases where there are funds in the construction account, that is, the supervised bank account or the special bank account, which are not immediately needed for the payment of development costs, such excess funds may be:

(i) Deposited in an interest-bearing account or in a financial institution which has qualified as a designated depository under this paragraph. The account or deposit will be in the name of the association and the FmHA County Supervisor, by title, under a three-party deposit agreement. Use Form FmHA 402-4, "Interest Bearing Deposit Agreement."

(a) The original of such three-party agreement will be delivered to the association, a signed copy will be placed on file with the bank, a signed copy will be placed in the association's case file, and a conformed copy will be attached to any certificate(s) of deposit which may be issued to represent such deposits.

(ii) Used by the association to purchase insured notes or bonds held by the FmHA in its insurance funds, if any such notes are available under any repurchase policy then in effect. Upon such purchase, the association will sign a written agreement that it will not sell or assign the obligations purchased without the approval of the FmHA, and that the proceeds of any such resale will be reinvested in similar obligations or will be deposited under the same conditions as original loan funds are deposited. For associations contemplating the purchase of such insured notes or bonds, State directors will contact the Director, Finance Office, well in advance of loan closing to determine that such notes will be available for purchase on terms which will permit the association to obtain cash when needed for authorized loan purposes.

(iii) Invested in obligations of the United States or in other obligations in which political subdivisions of the State are authorized to invest under applicable statutes (this is equally applicable to corporation borrowers) with the prior approval of the State Director. Before approving such a request from the borrower, the State Director must be satisfied that adequate provisions are made for continued FmHA control over such investments. For bearer obligations this may be accomplished by an escrow agreement with the depository bank whereby the bank agrees to retain custody of the bearer paper subject to the joint signature of the borrower and the county supervisor.

(8) All income from investments under paragraph (l)(7) (i), (ii) or (iii) of this section must be deposited along with loan funds and be used for approved loan purposes or applied on the association's obligation to the FmHA, or in accordance with the bond ordinance or resolution.

(9) Careful accounting is necessary to see that FmHA loan funds will be used for authorized purposes.

(i) Should loan funds remain available after all cost incident to the basic project have been paid or provided for, such funds may be used for needed extensions, enlargements, and improvements of the project with the prior permission of the State Director. If the additional work is to be undertaken by the contractor(s) already engaged in the construction of the project, the additional work may be authorized by a change order. If the amount of such loan funds remaining available exceeds 20 percent of the project cost, the prior approval of the National Office will be obtained before any additional work is authorized by the State Director.

(ii) Obligated funds and any applicant contributions which are in the supervised or special bank account and which remain after project completion, including any expenditures made as authorized in paragraph (l)(9)(i) of this section, have been met or provided for will be returned to the Finance Office and applied as an extra payment on the loan or, if otherwise required by the bond resolution, ordinance, or similar instrument, such funds will be transferred from the construction account to the debt service account to be applied for bond redemption purposes in the manner therein provided.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[35 FR 15091, Sept. 29, 1970, as amended at 44 FR 38441, July 2, 1979; 46 FR 36106, July 14, 1981]

§ 1823.273 Actions subsequent to loan closing.

(a) *Mortgages.* The real estate or chattel mortgages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the association. The original instrument for both insured and direct loans if returnable after recordation or filing, will be retained in the association's County Office case folder.

(b) *Notes.* For a direct loan, the original of the note, or for a loan from the ACIF, the original and a conformed copy of the note will be sent to the Finance Office immediately after loan closing. For an insured loan not made out of the ACIF, the original of the note along with the properly executed insurance endorsement will be delivered or sent to the lender. A conformed copy of the note and insurance endorsement will be sent to the finance office.

(c) *Disposition of title evidence.* All title evidence, other than the opinion of title, mortgage title insurance policy, and water stock certificates, will be returned to the association when the loan has been closed.

(d) *Disbursement of funds.* Funds may be disbursed for authorized purposes as soon as the loan has been closed.

(e) *Water stock certificates.* Water stock certificates will be filed in the loan docket in the county office.

§ 1823.274 Review of loan closing—final opinions.

All loan closing actions will be reviewed to determine if closing instructions have been complied with.

(a) *Review by State Director's representative.* Closing actions for loans closed in accordance with closing instructions issued by the State Director, and loans closed in accordance with OGC instructions but for which OGC review and final opinion is not necessary (see § 1823.270(b)), will be reviewed by the District Supervisor or other member of the State staff. Results and findings of such review will be recorded in memorandum form, the original of which will be placed in the loan file, with a copy to the State Director.

(1) If the review results in a question concerning closing, the reviewing official will submit the questions along with the file to the State Director. The State Director may request assistance of OGC if his review of the case indicates that such assistance is needed to resolve the problems.

(2) In order to provide for a system of monitoring loan closings, State Directors will arrange to have at least one of every 10 such loans submitted to OGC for review after closing has been completed and final opinion by the association's attorney has been obtained.

(b) *Loans requiring OGC final opinion.* When loans which are to have an OGC final opinion have been closed, the County Supervisor will submit to the State Director:

(1) The completed docket.

(2) A statement covering information, other than the completion of legal documents, showing what was done in carrying out loan closing instructions.

(c) *Review by State Director of County Supervisor's statement.* The State Director will review the County Supervisor's statement concerning loan closing and the security instruments and other documents used in closing to determine whether it was closed properly. All material submitted along with the statement that all administrative requirements have been met will be referred to the OGC for post review, with a request for a written opinion as to whether all legal requirements have been met. When the opinion from the OGC is received, the State Director will advise the County Supervisor of any deficiencies that must be corrected and return to the County Supervisor all material that was submitted for review.

§ 1823.275 Applications not receiving favorable consideration and loan cancellation.

(a) *Applications not favorably considered.* If at any time prior to loan approval the County Supervisor is informed or determines that favorable action will not be taken on an application, he will notify the association immediately informing it of the reasons why the request was not favorably considered.

(b) *Cancellation of loans.* Loans which have been approved and obligations which have been established may be canceled before closing as follows:

(1) The County Supervisor or State Director may prepare and execute Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert (FMI).

(i) For an insured loan by a private lender, any checks advanced will be returned promptly to the lender with an explanatory letter.

(ii) In a direct loan or a loan made from the ACIF, if the check has been received or is received subsequently in the County Office, the County Supervisor will return it to the Finance Office with an original and one copy of Form FmHA 1940-10.

(2) If the docket previously has been forwarded to the OGC, that office will

be notified of the cancellation by a copy of Form FmHA 1940-10.

(3) Any application for title insurance will be canceled. Likewise, the association's attorney and engineer, if any, should be notified of the cancellation. The County Supervisor may provide the association's attorney and engineer with a copy of the notification to the applicant.

[35 FR 15091, Sept. 29, 1970, as amended at 47 FR 36412, Aug. 20, 1982]

§ 1823.276 Planning and performing development.

All projects will be planned and designed in accordance with Part 1942, Subpart A and will include a basic facility and any related contingency extensions, enlargements, or improvements. Such contingency items may be completed if there are sufficient funds remaining to pay for them after all costs of the basic facility have been paid. Contingency items will be described in the project summary. For example, contingency items might include landscaping or paving of additional areas in connection with a recreational project, construction of additional corrals and livestock handling facilities not included in the basic facility of a grazing project; and other items related to the basic facility.

(a) All development will be scheduled for completion in the minimum practicable time.

(b) No loan will be approved unless sufficient funds have been assured to complete planned development. In those cases where planned development is dependent on cost sharing by SCS, ASCS, and other Federal and State agencies, the docket will include letters from local representatives or other evidence that such funds will be available.

(7 U.S.C. 1989; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[35 FR 15091, Sept. 29, 1970, as amended at 44 FR 6353, Feb. 1, 1979]

§ 1823.277 State Office controls.

Each State Director will establish and maintain sufficient records to assure adequate supervision of his loan allocations. Such records should be maintained for each type of fund and purpose (for example, direct loans—waste disposal), and should contain at least the following: Amount of allocations, date initial and subsequent allocations received; amount reserved for use through the issuance of a letter of conditions, along with the name of the applicant, date funds will likely be needed; amounts and dates of obligations showing the name of the applicant and the date funds will likely be needed, and; current totals unreserved and unobligated.

(a) Form FmHA 440-37 will not be issued unless the State Director has either obligated or reserved funds for the project.

(b) It is necessary that State Directors maintain processing schedules and keep their District and County Supervisors currently informed regarding those applications which are to be processed and the availability of funds for such applications.

(c) Form FmHA 440-36, "Association or Organization Activity Card," will be maintained for each applicant.

[35 FR 15091, Sept. 29, 1970, as amended at 41 FR 7489, Feb. 19, 1976]

§ 1823.278 State issuances.

The State Director will supplement this subpart with State issuances necessary to the successful operation of the programs. The State Director with the assistance of the OGC may change or substitute documents or modify procedures as set out in this subpart only to the extent necessary to enable applicants to comply with the applicable provisions of State laws.

(a) Each State Director will include in his State issuances:

(1) Additional definitions, if needed.

(2) Instructions relative to processing applications.

(3) Requirements for reporting progress on application processing.

(4) District supervisor responsibilities.

(5) Assembly of material for presentation to the OGC.

(6) Requesting assistance of State staff.

(7) Handling of mortgages and security instruments.

(8) Security, including preparation of instruments.

(9) Notes, bonds, resolutions, ordinances, including preparation.

(10) Reserves.

(11) Insurance and bonding.

(12) Coordination with local agencies.

(13) Selection of and relations with attorneys, engineers, and other technical and professional applicant representatives.

(14) Preparation of appraisal reports.

(15) Effect of State statutes, rules and regulations on programs, including whether State statutes forbid deferment of interest on direct FmHA loans.

(16) State forms, guides, checklists, and other issuances.

(17) Loan closing, reviews of closing, and final opinions.

§ 1823.279 Subsequent loans.

Subsequent loans will be processed in accordance with this subpart.

§ 1823.280 Loan servicing.

Loans will be serviced in accordance with Subpart E of Part 1951 of this chapter.

[37 FR 14218, July 18, 1972, as amended at 47 FR 52119, Nov. 19, 1982]

§ 1823.281 Management assistance.

Management assistance will be based on such key factors as observation of borrower operations and facility maintenance and review of the periodic management and audit reports. The amount and type of assistance provided will be that needed to assure borrower success and compliance with its agreements with FmHA.

(a) *Borrower management reports, audits, and accounting systems.* Requirements pertaining to borrower accounting systems and management reports are detailed in §§ 1823.282 through 1823.289. Requirements pertaining to audit reports are contained in a booklet entitled, "FmHA Instructions to Independent Certified Public Accountants and Licensed Public Accountants." Copies of the audit booklet will be given to each applicant at a time not later than delivery of the letter of conditions.

(1) *Management reports.* (i) County Supervisors will obtain from the borrowers and forward to the State Director two copies of periodic management reports within 20 days after the end of the period shown below:

Type of borrower	Form FmHA 442-2 "Statement of income and expenses for the fiscal year to date"	Form FmHA 442-3 "Balance sheet"
Recreation	Quarter	Fiscal year
Grazing	Semiannual	Do
Drainage, irrigation, or other soil and water conservation	Fiscal year	Do
Watershed	do	Do
Timber development	do	Do
Incorporated economic opportunity cooperative	Quarter	Do
Resource conservation and development	(1)	(1)

[1] In accordance with purpose of loan.

(ii) County supervisors will also obtain Form FmHA 442-1, "Forecast of Cash Receipts and Disbursements (Operating Budget)," from the borrowers shown in paragraph (a)(1)(i) of this section for the new fiscal year and forward it to the State director no later than 20 days after the beginning of the borrower's new fiscal year.

(iii) Unincorporated economic opportunity cooperatives having an annual gross income of $10,000 or less will not be required to submit periodic management reports nor minutes of meetings unless the State director desires otherwise.

(iv) The State director will designate a member of the Community Programs staff to be responsible for the review of borrower management reports. Ordinarily, review findings and instructions regarding further assistance will be forwarded to FmHA field personnel within 20 days of submission for delinquent and borrowers. Form FmHA 430-4, "5-Year borrowers. Form FHA 430-4, "5-Year Progress Report," will be updated during each State office review.

(v) Copies of review findings, instructions for further assistance, and management reports pertaining to delinquent and problem borrowers will be forwarded to the national office.

(vi) The State director may:

(*a*) After the end of the borrower's third full fiscal year of operation, exempt it from submitting management reports other than annually, provided it is current on its loans; is meeting the conditions of its agreements with FmHA; is properly maintaining its facility; and has demonstrated its ability to successfully operate its facility and manage its affairs. Borrowers qualifying for this exemption will only be required to submit copies of Forms FmHA 442-1, FmHA 442-2, "Statement of Income and Expenses for the Fiscal Year to Date," FmHA 442-3, "Balance Sheet," and, for those borrowers required to submit an audit, a copy of the audit report.

(*b*) Reinstate the requirement for submission of periodic management reports for those borrowers who become delinquent or otherwise are not carrying out their agreements with FmHA.

(*c*) Require more frequent submission of management reports.

(2) *Audit reports and accounting systems.* (i) The county supervisor will obtain audit reports from those borrowers required to submit them and send them to the State director for forwarding to the national office. All audit reports will receive national office review. Review results and recommendations or instructions for further assistance and audit preparation will be provided the State director.

(ii) Borrowers accounting systems must be approved by the State director before loan funds are advanced.

(iii) The State director may:

(*a*) Waive FmHA accounting and auditing requirements for a public entity borrower if State statutes or regulations require adequate accounting and auditing procedures, and if he has reasonable assurance that he will obtain the necessary financial information for borrower assistance from the accounting system and audit reports prepared in accordance with such statutes or regulations.

(*b*) Require an audit report from any borrower in addition to those described in §§ 1823.282 through 1823.289 when he determines that the FmHA's or the borrower's interests would be better protected if such an audit were made.

(b) *Application to borrowers indebted to FmHA upon receipt of this subpart*—(1) *Management reports.* The requirements of this subpart will apply.

(2) *Accounting systems.* The requirements of this subpart apply to all such borrowers who the State director determines are not now maintaining adequate accounting systems.

(c) *District supervisor reports.* The district supervisor will complete and forward to the State director Form FmHA 442-4, "District Supervisor Report—Association-Organization Borrowers," for all borrowers between the fourth and ninth month of operation in the first year, and prior to March 31 of each year for borrowers delinquent in making their annual payments by January 21. Unincorporated economic opporutnity cooperatives and borrowers transferred to collection-only are excluded.

(d) *Security inspections.* A representative of the borrower will ordinarily accompany the FmHA county supervisor during each inspection.

(1) *Initial inspection.* The county supervisor will inspect each borrower's security property and facility at the end of the first year of operation. The results of this inspection will be reported to the State director on Form FmHA 424-12, "Inspection Report."

(2) *Subsequent inspections.* The county supervisor will make subsequent inspections of borrower security property and facilities during each third year after the initial inspection. The results of this inspection will be reported to the State director on Form FmHA 424-12.

(3) *Special inspections.* The county supervisor may request or the State director may determine the need for a member of his State staff to make certain security inspections. In such cases the State director will detail a member of his staff to make such inspections.

(4) *Follow-up inspections.* If any inspection discloses deficiencies or exceptions or otherwise indicates a need for subsequent inspections prior to the third year, the State director will prescribe the type and frequency of followup inspections. These inspections

will be made until all deficiencies and exceptions have been corrected.

§ 1823.282 Introduction.

Sections 1823.282 through 1823.289 set forth guidelines pertaining to accounting systems, management reports, and audits for FmHA borrowers. Accounting systems which utilize the suggested chart of accounts and which are maintained in accordance with generally accepted accounting principles, will supply the necessary accounting data for borrower operations.

§ 1823.283 Borrower responsibilities.

All FmHA borrowers are required to maintain adequate records and accounts and submit financial and statistical reports to FmHA. Borrower agreements provide that FmHA representative may have access to and the right to inspect any or all books, records, and accounts pertaining to the facility of the borrower. Those elected and/or appointed officials (hereinafter referred to as governing bodies) of the borrower, are by virtue of their posistion charged with:

(a) Accepting their responsibilities as defined in the articles of incorporation and bylaws, the statutes under which they operate, and the terms of their agreements with FmHA.

(b) Conducting borrower affairs so that the terms of its agreements with FmHA will be fulfilled.

(c) Maintaining accounting records adequate for successful operation.

(d) Preparing reports necessary for successful management and operation and submitting copies of such reports to FmHA as required.

(e) Planning for sufficient income and control costs to the extent necessary to assure that all financial obligations can be paid when due.

(f) Establishing and maintaining rules, regulations, rate schedules, fees, assessments, and policies necessary for orderly and economic operation.

(g) Providing proper control and management of operations, and informing members, users, or patrons of organization goals, activities, and current financial situation.

§ 1823.284 Accounts and records.

Each borrower will keep and safely preserve its books of account and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish full information as to any items included in any account. Each entry will be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto.

(a) *Accounting systems.* Each FmHA borrower is responsible for establishing and maintaining its accounting system, which must be operational and approved by FmHA before any loan funds are received. Systems will be maintained on an accrual basis.

(1) Borrowers with small operations may use Form FmHA 430-5, "Soil and Water Association Record Book."

(2) Accounting systems required by a State or regulatory agency for public entites may be acceptable to FmHA.

(3) A recommended minimum chart of accounts is shown in § 1823.289.

(4) Accounting systems may be maintained by borrower personnel, a bookkeeping service, a computer service or through other arrangements satisfactory to the borrower and FmHA.

(b) *Closing of books.* Each borrower will close its accounting records at the end of its fiscal year unless State statutes or regulations prescribed otherwise.

(c) *Bank accounts.* (1) Borrowers will maintain a bank account or bank accounts in a bank whose deposits are insured by the Federal Deposit Insurance Corporation.

(2) The private bank account of the borrower will be known as the Revenue Fund Account and all revenue will be deposited therein and expended and used only in the manner prescribed by the bond ordinance, loan agreement, or loan resolution.

(3) The reserve cash account may be invested in an interest bearing savings account, certificates of deposit, treasury bills, a savings and loan association account or may be used to make a prepayment on the FmHA loan.

§ 1823.285 Management reports.

Effective decisions by governing bodies are critical to successful operation. In order to make effective decisions, the governing body must receive timely information by means of financial and other appropriate reports which will assist it in the fulfillment of its basic tasks, the formulation of plans to achieve goals, and the control of operations to accomplish planned results. The following minimum required reports will furnish the governing body with a means of evaluating prior decisions and serve as a basis for planning the future operations and financial conditions of the borrower.

(a) *Form FmHA 442-1, "Forecast of Cash Receipts and Disbursements (Operating Budget)."* (1) The forecast will be prepared and adopted by the governing body prior to the beginning of each fiscal year. It should be based on realistic and informed estimates of expected receipts and disbursements for the coming fiscal year. Planning should generally be done on the basis of controlling expenses as much as possible, and insuring that rates, fees, and so forth, are set to provide the necessary revenue. Throughout the year, other financial reports which compare the forecast with actual receipts and disbursements will provide valuable information in the preparation of future budgets.

(2) Two copies of Form FmHA 442-1 and copies of the minutes of the meeting at which it was approved will be submitted to the FmHA County Supervisor no later than 20 days after the beginning of the borrower's new fiscal year.

(b) *Form FmHA 442-2, "Statement of Income and Expenses for the Fiscal Year to Date."* The statement will be used to detail the income and expenses during a given accounting period. Two copies of Form FmHA 442-2 will be forwarded to the FmHA County Supervisor each time it is prepared.

(c) *Form FmHA 442-3, "Balance Sheet."* This form is a statement of financial conditions and discloses the assets, liabilities, reserves, and net worth of the borrower as of the end of an accounting period such a quarterly, semiannually or annually. The balance sheet will be prepared as often as needed by the governing body. Two copies of Form FmHA 442-3, prepared as of the end of the fiscal year will be forwarded to the FmHA County Supervisor no later than 20 days after the end of the fiscal year.

(d) *Report submission.* Those borrowers using a machine accounting system may submit printout-type reports providing these reports are in the format of the required FmHA forms. Also, borrowers desiring to submit more detailed information than required by FmHA forms may attach such detail to the related FmHA form.

(Approved by the Office of Management and Budget under control nos. 0575-0013, 0575-0014.)

(44 U.S.C. 3506)

[37 FR 14218, July 18, 1972, as amended at 47 FR 745, Jan. 7, 1982]

§ 1823.286 Additional reports.

Each borrower is required to provide the FmHA County Supervisor within 20 days following the end of the fiscal year the following:

(a) A letter showing:

(1) The name, address, and term of office for each member of the governing body, and

(2) The number of members benefiting from the facility.

(b) Evidence that required property and liability insurance, workmen's compensation, and fidelity bond premiums have been paid.

§ 1823.287 Audits.

FmHA borrowers required to have an annual audit performed by an independent public accountant are those whose projected gross income for a full year of operations (column 3 of Form FmHA 442-1) exceeds $25,000, and others as required by the FmHA State Director. Borrowers whose annual gross income is less than $25,000 may have an annual audit made by an independent public accountant.

(a) Such audits will be conducted in accordance with generally accepted auditing standards by independent certified public accountants or by independent licensed public accountants licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

(b) Audits will be prepared in accordance with the requirements of the handbook, "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrower and Grantees."

(c) Audit reports prepared for a borrower in accordance with the requirements of a State or other regulatory agency, may be accepted by FmHA in lieu of those required in paragraph (b) of this section.

(d) A copy of the audit report will be forwarded to the FmHA County Supervisor by the borrower as soon as it is received.

§ 1823.288 Financial reports for organizations not required to submit an audit report.

Borrowers whose annual gross incomes for a full year of operation are less than $25,000 and not having an annual audit made by an independent public accountant, will within 60 days following the end of each fiscal year, furnish the FmHA county supervisor with an annual report, consisting of a verification of the organization's balance sheet and statement of income and expense by a committee of the membership not including any officer, director, or employee. Such committees will be appointed by the borrower's governing body and will certify to its examination of the accounts and records. The final form FmHA 442-2, "Statement of Income and Expense," for the year and the form FmHA 442-3, "Balance Sheet," will be used. Borrowers having six or less members may use officers or directors on such committees.

[38 FR 8663, Apr. 5, 1973]

§ 1823.289 Minimum chart of accounts for FmHA borrowers.

Each FmHA borrower will keep its books of account and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry will be supported by such detailed information as will permit a ready identification, analysis, and verification of all facts relevant thereto. This is a minimum suggested chart of accounts for FmHA borrowers. Each borrower should establish a general ledger using only those accounts that are necessary to adequately furnish the information needed to prepare balance sheets and other financial reports. Other needed accounts may be added. Some accounts with credit balances are included among the assets because this is the order in which these accounts are usually shown on the balance sheet. (Example: Allowance for Uncollectable Receivables.) The numbers preceding each account are for reference purposes only and are not intended to represent a comprehensive method of coding.

100 ASSETS—CURRENT

101 Cash—Revenue Fund Account.
102 Cash—Operation and Maintenance Fund.
103 Cash—Debt Service.
104 Cash—Reserve Fund.
105 Cash—Construction Funds.
106 Petty Cash and Change Fund.
111 Accounts Receivable—General.
112 Accounts Receivable—Members.
113 Accounts Receivable—Employees.
115 Allowance for Uncollectable Receivables.
121 Inventory.

150 ASSETS—FIXED

151 Plant and Buildings.
152 Office furniture and fixtures.
153 Machinery and Equipment.
154 Automotive Equipment.
159 Allowance for Depreciation.
161 Land.
164 Organization Expense.

180 ASSETS—DEFERRED

181 Prepaid Expenses.

200 LIABILITIES—CURRENT

201 Accounts Payable—Members.
202 Accounts Payable—Trade.
203 Notes Payable—Current Portion.
204 Taxes—Payable.
207 Interest—Payable.
212 Wages—Payable.

250 LIABILITIES—LONG TERM

253 Notes Payable—FmHA
254 Notes Payable—Members.

260 LIABILITIES—OTHER

280 NET WORTH

281	Members Invested Equity.
288	Retained Earnings.
300	INCOME ACCOUNTS
301	Membership Dues.
304	Sales.
306	Rent.
310	Miscellaneous.
317	Interest.
400	EXPENSES
402	Salaries—Wages.
404	Taxes.
413	Accounting Fees.
414	Legal Fees.
417	Interest.
418	Utilities.
422	Gasoline, Oil, Fuel.
423	Insurance.
430	Repairs and Maintenance.
431	Supplies.
438	Office Supplies and Printing.
440	Supplies for Resale.
446	Bank Charges.
448	Miscellaneous.
450	Depreciation—General.

Subparts J–M—[Reserved]

Subpart N—Loans to Indian Tribes and Tribal Corporations

AUTHORITY: 5 U.S.C. 1989; 5 U.S.C. 301; delegation of authority by the Sec. of Agr., 38 FR 14144, 14948, 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 38 FR 14944, 14952, 7 CFR 2.70.

SOURCE: 39 FR 3662, Jan. 29, 1974, unless otherwise noted.

§ 1823.401 General.

This subpart contains policies and procedures of the Farmers Home Administration (FmHA) applicable to making initial and subsequent insured loans to Indian tribes or tribal corporations for the acquisition of land within tribal reservations and Alaskan communities. The Secretary of the Interior or his authorized representative will determine whether lands lie within a tribal reservation or community.

§ 1823.402 Definitions.

The following definitions are applicable to the subsequent provisions of this subpart.

(a) *Land.* The term "land" includes any or all rights or interests therein.

(b) *Tribe.* The term "tribe" means an Indian Tribe recognized by the Secretary of the Interior or a tribal corporation established pursuant to the Indian Reorganization Act, and/or a community in Alaska incorporated by the Secretary of the Interior pursuant to the Indian Reorganization Act.

(c) *Tribal.* The term "tribal" refers to an Indian tribe or Alaskan community described in paragraph (b) of this section, and "tribal members" refers to the members of such a tribe or community.

(d) *Reservation.* The term "reservation" means the lands or interests therein within the tribe's reservation as determined by the Secretary of the Interior, or within a community in Alaska incorporated by the Secretary of the Interior pursuant to the Indian Reorganization Act.

(e) *Mortgage.* The term "mortgage" includes deeds of trust and other liens on land.

§ 1823.403 Eligibility.

To be eligible for a loan, the tribe must:

(a) Be without adequate uncommitted funds to acquire needed land within the reservation.

(b) Be unable to obtain sufficient credit elsewhere at reasonable rates and terms to finance the proposed land acquisition.

(c) Show reasonable prospects of repaying the loan as determined by:

(1) A feasible plan for the use of the tribe's land.

(2) Satisfactory evidence of financial ability to develop and operate the land.

(3) A satisfactory management and repayment plan.

§ 1823.404 Loan purposes.

Loan funds may be used by the tribe to:

(a) Acquire land within the reservation for use of the tribe or its members. The land acquisition may be made for purposes such as elimination of fractional heirships and rounding out farming and ranching units.

(b) Pay costs incidental to land acquisition, such as those for appraisals, title clearance, legal services, land surveys, and loan closing.

§ 1823.405 Ineligible loan purposes.

Loan funds may not be used for any improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, refinancing of debts, payment of finder's fees or similar costs.

§ 1823.406 Rates and terms.

Each loan will be amortized over a period not to exceed 40 years. In addition, no repayment period will exceed any statutory limit on a tribe's borrowing authority or the useful life of the security if other than land. Interest to the borrower will be five percent.

§ 1823.407 Use of acquired land.

The land acquired with the FmHA loan may be leased or sold to tribal members for dwelling, farming, grazing, recreational, and other purposes approved by the National Office as beneficial to the tribe or its members. The plan for use of the land must have the approval of the tribal council or other authorized governing body, and should be in accordance with the recommendations of appropriate Bureau of Indian Affairs (BIA) officials. It should also be consistent with the land use in the area unless other uses are justified. The plan should make maximum use of cost sharing and technical assistance of Federal and State programs.

§ 1823.408 Special requirements.

(a) *Loan authorization.* The tribe will take appropriate action to authorize obtaining and giving security for the loan, using Exhibit B of this Subpart N, Tribal Council Resolution, as a guide.

(b) *Right to mortgage.* If a mortgage is to be obtained on trust or restricted property and the tribe's constitution or charter does not specifically authorize a mortgage of such property, the mortgage must be authorized by tribal referendum.

(c) *Waiver of immunity.* The appropriate tribal official(s) will execute on behalf of the tribe and in favor of FmHA a waiver of any immunity from suit or liability which it possesses. The waiver will be approved by the Secretary of the Interior or his authorized representative.

(d) *Mortgages or assignments to third parties.* At the time of loan closing an agreement will be obtained form the tribe that as long as any indebtedness on the loan is outstanding it will not, without the written consent of FmHA:

(1) Give assignments or pledges to other parties of income, revenue, or other property assigned or pledged to FmHA.

(2) Mortgage, sell, or otherwise dispose of any land (except sales to tribal members for market value) regardless of whether it is or is not mortgaged to FmHA.

(3) This agreement will be submitted to the Office of the General Counsel (OGC) for review as to content and validity. For trust lands, a copy will be forwarded to the BIA. For other than trust lands, it will be recorded in the land records if OGC advises that such recordation is legally necessary.

(e) *Land acquisition, debt service, and reserve accounts.* The following accounts will be established at the time of loan closing. A properly bonded official of the tribe will receive the monies for each account and issue receipts therefor. The bonded official will deposit all such monies in the appropriate trust or counter-signature accounts. As a basis for withdrawals, the deposit agreement for each account will require the signatures of appropriate tribal official(s) and the FmHA County Supervisor or a BIA official, depending on whether the account is a BIA trust account or an FmHA supervised account in a commercial bank.

(1) *Land acquisition account.* The loan funds will be deposited in this account which will be established as a "Supervised Bank Account." If funds in this account exceed $100,000, it shall be secured by the financial institution in advance in accordance with U.S. Treasury Department Circular No. 176.

(2) *Debt service account.* A debt service account will be established at the time of loan closing for deposit of income assigned to FmHA to be used in making repayments on the loan and payments to the reserve account.

(3) *Reserve account.* This account will be established for debt service reserve purposes. On or before the first installment due date, an amount equal to one-tenth (1/10) of the amount to be paid annually on the loan will be deposited in this reserve account. An equal amount will be deposited in the account during each succeeding year until a full annual payment is accumulated.

(i) Funds in the reserve account may be used to make repayments on the loan when the tribe cannot meet the installments from other sources as they fall due. Any funds used for that purpose will be replaced as soon as possible before the next installment due date.

(ii) The reserve fund may be invested in short-term investments that are issued, guaranteed, or insured by the Federal or a State Government and name FmHA as co-owner.

[39 FR 3662, Jan. 29, 1974, as amended at 46 FR 36106, July 14, 1981]

§ 1823.409 Security.

All loans will be secured in a manner that will adequately protect the interests of FmHA. Ordinarily, the security will include a lien on land acquired with loan funds plus assignment(s) of income. However, the security may consist only of assignments of income if the State Director determines that it will provide as good or better security than the land acquired with loan funds. Such security may be supplemented by security interests in personal property which is available and needed to protect the interests of FmHA.

(a) *Land plus assignments of income.* When land security is taken, it will be coupled with assignment(s) of uncommitted tribal, trust, or other income sufficient to cover loan repayments and payments to the reserve account.

(b) *Assignments of income without land security.* One or more assignments of income determined to be sufficient to cover the installment repayments plus reserve on the loan will be taken using Exhibit C in this Subpart N as a guide. The assignment may consist of one or more of the following:

(1) *Assignment of uncommitted income.* A general assignment of uncommitted tribal, trust, or other income, together with a BIA Subordination Agreement using Exhibit D in this Subpart N as a guide. A statement will be obtained from BIA on the amount of such income that will be available to cover repayments and payments to the reserve account.

(2) *Assignment of land sale or lease income.* An assignment of any net proceeds from the sale, lease, or other disposition of real estate, including minerals, timber, water, water rights, or other interests in real estate, if a real estate mortgage is not taken on such property.

(3) *Assignment of other income.* An assignment or pledge of other income or revenue.

(c) *Recordation of assignments.* Each assignment of income will be approved by BIA and recorded in the appropriate public records.

§ 1823.410 Appraisals.

The amount of loan funds used to acquire property will not exceed its market value as determined by FmHA. Market value will be based on an appraisal made by authorized FmHa personnel, BIA appraisers or appraisers approved by the State Director. The value of any existing buildings that pass with the land will be deducted from the market value.

[43 FR 18161, Apr. 28, 1978]

§ 1823.411 Land rights.

Title to land acquired may, with the approval of the Secretary of the Interior or his designee, be in the name of the United States in trust for the tribe.

§ 1823.412 Loan docket.

The loan docket will consist of those items set forth in Exhibit A. Forms and guides are available in all FmHA County Offices. Part of the docket will be prepared by the tribe with the assistance of BIA in accordance with Exhibits A(1), B, C, and D of this Subpart N. FmHA will provide items in Exhibit A(2) of Subpart N.

§ 1823.413 Loan approval.

State Directors are authorized to approve all loans except those in excess of $500,000 which must first be authorized by the National Office. Information to be furnished the National Office will include the completed loan docket, proposed letter of conditions to be met by the applicant, any comments of OGC, and the State Director's recommendations. The State Director will forward an executed Form FmHA 440-1, "Request for Obligations of Funds," to the Finance Office for each loan approved. If approval was authorized by the National Office, a copy of the memorandum authorizing approval will be attached to the Form FmHA 440-3. An executed Form FmHA 440-1 will be forwarded to the applicant on the same date the loan is approved, that is, on the same date it is forwarded to the Finance Office.

[39 FR 3662, Jan. 29, 1974, as amended at 41 FR 7488, Feb. 19, 1976]

§ 1823.414 Title to security property.

The applicant will provide evidence of title satisfactory to the FmHA for all property that will serve as security for the loan.

(a) *Real estate security.* (1) *Trust property.* The applicant will request BIA to furnish Title Status Reports to the County Supervisor. The County Supervisor will review the reports in accordance with § 1807.2(d) of this chapter. Form FmHA 427-13, "Waiver of Encumbrances, Exceptions, and Reservations," will be used as appropriate. The County Supervisor will ask the State Director for advice if he has any questions.

(i) If administrative closing requirements can be met, BIA will prepare the deeds and obtain the needed signatures. The County Supervisor will supply BIA with Forms 427-1, "Real Estate Mortgage for (State)", and FmHA 440-22, "Promissory Note (Association or Organization)." BIA will insert the appropriate land descriptions.

(ii) The partly completed real estate mortgage and note will be returned to the County Supervisor. The loan check can then be ordered and the loan closed. The mortgage and note will be completed and signed, but no funds will be disbursed.

(iii) A conformed copy of the note with the original mortgage and two copies will be forwarded to BIA. They will insert a certification on the mortgage and return it to the County Supervisor. BIA will also indicate that the deeds have been recorded and the priority of the Government's lien in a continuation of the Title Status Report. However, the certification about the lien priority may be made on the old Status Report if BIA prefers this.

(iv) The certified original mortgage will then be recorded by the County Supervisor in the county where the land is located if OGC determines that such recordation is necessary. Funds can be disbursed as soon as the mortgage is recorded or the determination is made that recordation is not necessary.

(2) *Nontrust land.* Title clearance will be obtained in accordance with Part 1807 of this chapter except the applicant's attorney will be used instead of the designated attorney.

(b) *Rights of way.* The applicant will be responsible for obtaining adequate, continuous, and valid rights-of-way for operation, and maintenance of its property. The following documentary evidence will be furnished FmHA.

(1) A copy of the form of right-of-way instrument to be used if it differs from Form FmHA 442-20, "Right-of-Way Easement." Rights-of-way with restrictive provisions should be accepted only in very unusual circumstances. Whenever the form of the instrument differs from Form FHA 442-20 or contains special provisions that are required by either the applicant or the grantor, copies of such instruments will be submitted to the FHA for review prior to acceptance and recording. Either specific rights-of-way containing a legal property description of a centerline description of the rights-of-way or general rights-of-way containing only a description of the tract or parcel of land affected, may be used.

(2) A certificate by a duly authorized official of the applicant that it has obtained and presently holds adequate and sufficient legal title to all rights-

of-way, permits and other authorizations deemed necessary by the applicant and its attorney for an uninterrupted right-of-way for the operation and maintenance of the property. Use Form FmHA 442-21, "Right-of-Way Certificate."

(3) An opinion by the applicant's attorney relating to the adequacy and legality of the rights-of-way covered by the right-of-way certificate. Use Form FmHA 442-22, "Opinion of Counsel Relative to Rights-of-Way," to the extent possible.

(c) *Lien on water rights.* When a mortgage or an assignment will be taken on water rights, the applicant's attorney will furnish a statement regarding the nature of the water rights owned such as convenance of title, appropriation and decree, application and permit, public notice of appropriation and use, and so forth.

(d) *Lien on chattel property.* When liens will be taken on chattel property, the following will be furnished:

(1) Description of the property for use in preparing security instruments.

(2) Form FmHA 440-13, "Report of Lien Search," or similar form prepared in accordance with the State requirements prescribing the use of such form for Operating loans.

(e) *Disposition of title evidence.* All title evidence other than the opinion of title, mortgage title insurance policy, and water stock certificates will be returned to the borrower when the loan has been closed. The opinion of title or title insurance policy and any water stock certificates will be retained in the borrower's county office case folder.

§ 1823.415 Supervision and servicing.

Borrowers will be supervised in accordance with Subpart I of Part 1823 of this chapter. Loans will be serviced in accordance with Subpart E of Part 1951 of this chapter. The cooperation, assistance, and advice of appropriate BIA officials will be sought at all times.

[39 FR 3662, Jan. 29, 1974, as amended at 47 FR 52119, Nov. 19, 1982]

§ 1823.416 Check request and loan closing.

Before any loan can be closed, the District Director must notify the State Director in writing that all loan closing conditions have been met. Checks will be requested and loans will be closed in accordance with §§ 1823.271 and 1823.272.

§ 1823.417 Civil rights.

Indian tribes, for the purpose of this subpart, are not subject to Title VI of the Civil Rights Act of 1964 so long as the expected use of land acquired does not include operation of a facility which would be open to the public. Therefore, such tribes are not subject to Part 1816 of this chapter.

§ 1823.418 State requirements.

Each State Director will, with the assistance of OGC, supplement this Subpart with State regulations, forms, worksheets, sample documents, and such other guidance as necessary to successfully carry out the program.

EXHIBIT A—LOAN DOCKET ITEMS—LOANS TO INDIAN TRIBES AND TRIBAL CORPORATIONS

(1) The tribe with the assistance of BIA will provide the following:

AD 621, Preapplication for Federal Assistance.

Form FmHA 442-12, Financial Statement.

Official audit report of the preceding 4 years including income and expenses.

List of tribal officers, including title and addresses and signature identifications.

Copy of tribe's constitution and bylaws or charter or other evidence of organization and rules of operation.

Legal services contract approved by BIA if a private law firm. A written statement will be provided when a BIA attorney performs the legal services.

Land Utilization Plan including:

(a) A short narrative description of why the land is being purchased, what use is to be made of it, and the annual net income expected to be derived from the land. If it has proven income record, that information should be included. If not, it should be so stated. If any development work is contemplated by the tribe, this should be explained, including assurance of the source of funds to carry out such development. If the land is to be operated by the tribe, this should be described, including assurance of availability of the necessary money to meet operating costs and method of management. If the land is to be leased, there should be a description of how it will be used and assurance that its intended use will conform to the overall land use pattern of the reservation or any variations justified; (b) Recommendation of BIA Soil Conservation Specialist.

Form FmHA 440-34, Option to Purchase Real Property or similar purchase agreement containing the provisions of the option.

Form FmHA 440-35, Acceptance of Option.

Form FmHA 442-7, Operating Budget or Statement of Income and Expenses including income and expenses from all sources.

Resolution of Tribal Council or other governing body approving and providing for the proposed land acquisition and any actions necessary to carry it out, such authority to encumber real estate and waiver of immunity and, where legally necessary, evidence of any required tribal election or referendum. The resolution should substantially conform with Exhibit B.

Subordination Agreement by BIA using Exhibit D as a guide.

Form FmHA 442-46, Letter of Intent to Meet Loan Conditions. Fidelity Bond for tribal officers authorized to handle monies.

Form FmHA 427-9, Preliminary Title Opinion, if required.

Form FmHA 442-20, Right-of-Way Easement, or right-of-way instrument, if appropriate.

Form FmHA 442-21, Right-of-Way Certificate, if appropriate.

Form FmHA 442-22, Opinion of Counsel Relative to Right-of-Way, if appropriate.

Form FmHA 440-13, Report of Lien Search, if appropriate.

Form FmHA 427-10, Final Title Opinion, if required.

(2) The FmHA County Supervisor will provide the following:

Form FmHA 442-1, Appraisal Report "Farm Tract," if BIA or commercial appraisers have not provided a current market appraisal.

Form FmHA 427-12, Waiver of Encumbrances, Exceptions and Reservations, if required.

Form FmHA 440-2, County Committee Certification or Recommendation.

Form FmHA 424-40, Project Summary (Loans to Indian Tribes and Tribal Corporations).

Form FmHA 442-11, Association Project Fund Analysis/Internal Conditions.

Form FmHA 440-1, Request for Obligation of Funds.

Form FmHA 440-22, Promissory Note.

Form FmHA 440-9, Supplementary Payment Agreement, if required.

Form FmHA 427-1 (State), Real Estate Mortgage.

Form FmHA 402-1, Deposit Agreement, if required.

(39 FR 3065, Jan. 22, 1974, as amended at 43 FR 7446, Feb. 23, 1978)

EXHIBIT B—TRIBAL COUNCIL RESOLUTION NO. ———

A RESOLUTION OF THE TRIBAL COUNCIL OF THE ——— TRIBE AUTHORIZING AND PROVIDING FOR (1) THE ISSUANCE OF AN INSTALLMENT PROMISSORY NOTE IN THE PRINCIPAL AMOUNT OF ——— TO FINANCE THE PURCHASE OF LAND, (2) THE GIVING OF SECURITY, (3) THE COLLECTION, HANDLING, AND DISPOSITION OF REVENUES OF THE LAND TO BE PURCHASED AND ANY OTHER LAND TO BE ENCUMBERED AS SECURITY, AND (4) RELATED ACTIONS AND MATTERS.

The ———, (hereafter referred to as "Tribe") is an Indian Tribe recognized by the Secretary of the Interior or is a tribal corporation established pursuant to the Indian Reorganization Act.

The Tribe wishes to acquire interests in approximately ——— acres of real estate (hereinafter called "the land") within its reservation or community for the use of and the improvement of the economic standing of the Tribe or its members but does not have adequate uncommitted funds for such acquisition.

A meeting of the tribal council or other governing body (hereafter called the "Council") with the required number of Council members present was held at ——— on the ——— day of ———, 19——, pursuant to notice thereof as required by its constitution, by-laws, corporate charter, or other organizational documents (hereafter called the "constitution") to consider a plan to finance the proposed land acquisition.

The Tribe has the authority to acquire lands or interests therein.

The Tribe is authorized to mortgage or otherwise hypothecate its land either by its constitution, or by a tribal referendum whereby such mortgage or other hypothecation has approved by at least a majority of the qualified voters at an election in which at least 30 percent of those eligible voted, or under such other rules as may be prescribed by the constitution of the Secretary of the Interior.

The Secretary of the Interior or his authorized representative has approved the mortgaging or hypothecation of the land.

As shown by the minutes of said meeting, of the ——— Members (Council members) of [illegible] of the Tribe there were present, and voting, ——— (Council Members and (or members)) [illegible] constitutionally such votes and actions are required as follows:

That in order to [illegible] the land the [illegible] (1) [illegible] the sum of the [illegible]

Tribe, to make application to the Farmers Home Administration of the United States Department of Agriculture (hereafter referred to as the "Government") for financial assistance; to cause the execution and delivery of promissory note or notes or other evidence of indebtedness and a mortgage, or other appropriate security instrument, to secure any loan or loans made, or insured, by the Government; to comply with any requirements, terms or conditions prescribed by the Government or by Government regulations; and to pay, extend or renew any such indebtedness; and to execute contracts or enter into agreements and, without limitation, to take any and all other action as may be necessary, incidental, or appropriate to finance acquisition of the land or interests therein in behalf of the Tribe.

Now therefore, it is hereby resolved by the Council of the Tribe as follows:

Section 1. (Determination of Council) It is necessary to defray all of a portion of the costs of acquiring the land or interests therein by obtaining a loan to be made or insured by the Government in accordance with applicable provisions of the Consolidated Farm and Rural Development Act and Pub. L. 91-229, it being determined that the Tribe is unable to obtain sufficient credit elsewhere to finance the acquisition taking into consideration prevailing private and cooperative rates and terms currently available.

Section 2. (Amount and Terms of Loan) The Tribe shall borrow $———— and issue as evidence thereof installment promissory note(s) in the form prescribed by the Government for the full principal amount of the loan. The note(s) shall be signed by the ———— (Appropriate Official) and attested by the ———— (Appropriate Official) and the corporate or other seal of the Tribe affixed thereto, and shall bear interest from its date, which shall be the date of loan closing, at a rate prescribed by the Government in its approval of the loan, but not to exceed —— percent per annum. The security instruments shall be in such form and contain the terms and conditions required by the Government.

Section 3. (Pledge of Revenue) The indebtedness hereby authorized shall be payable from the gross income and revenue to be derived from the operation of the tribal land, a portion of which sufficient to pay the principal and interest as and when the same shall be come due is hereby pledged and shall be set aside for that purpose.

Section 4. (Pledge of Additional Security) If the revenue pledged in Section 3 is insufficient to pay the principal and interest as and when the same shall become due or if it appears the revenue will be insufficient, the Council hereby pledges its taxing authority and the funds held in the United States Treasury in trust for the Tribe, for the purpose of making up the deficiency or expected deficiency shall be deposited in the debt service and reserve accounts established by Sections 5 B and C hereof and used as therein prescribed.

Section 5. (Protection and Disposition of Funds) The ———— (Appropriate Official) of the Tribe shall be the custodian of all loan funds of the Tribe and all revenues pledged for the repayment of the loan. All such funds shall be deposited in accordance with Part 1902, Subpart A of this chapter. The ———— (Appropriate Official) shall execute a fidelity bond in an amount not less than $———— with a surety company approved by the Government. The United States of America shall be named as coobligee in such bond, and the amount thereof shall not be reduced without the prior written consent of the Government. The ———— (Appropriate Official) is hereby directed to establish the following accounts into which proceeds of the note, the revenues from the land, and any other income pledged for repayment shall be deposited, which accounts shall be continually maintained, except as otherwise provided, so long as the indebtedness hereby authorized remains unpaid.

A. *Land Acquisition Account.* The proceeds of the loan hereby authorized shall be deposited in the Land Acquisition Account which shall be established as a "supervised bank account" as required by the Government. If funds in this account exceed $100,000, it shall be secured by the financial institution in advance in accordance with U.S. Treasury Department Circular No. 176. When all land acquisition costs have been paid in full, any balance remaining in the Land Acquisition Account shall be applied as a refund on the loan and the Land Acquisition Account shall be closed.

B. *Debt Service Account.* All assigned revenues shall be deposited in the Debt Service Account until there is an amount equal to the next annual installment to become due plus any delinquencies and payments are made to the Reserve Account. The Debt Service Account will be used for making annual installment payments on the loan, payments on any delinquencies that might occur, and payments to the Reserve Account.

C. *Reserve Account.* Out of the funds in the Debt Service Account, there shall be transferred annually to the Reserve Account the sum of $———— (10% of an annual payment of principal and interest) until there is accumulated in that fund the sum of $———— (one annual installment of principal and interest), after which no further transfers need be made to said account except that transfers shall be made to replace any withdrawals. Funds in the Reserve Account shall be used only for the purpose of making payments of principal and interest in the event the amount in the Debt Service Account is insufficient to meet such payments.

Section 6. (Other Covenants and Agreements of the Tribe) The Tribe covenants and agrees that, so long as the indebtedness hereby authorized remains unpaid, the Tribe will:

A. Comply with applicable Federal, State, and Tribal laws and regulations and maintain the land in good condition.

B. Impose and collect such rates and charges that gross revenues will be sufficient at all times for the maintenance of the land and the funding of the Debt Service and Reserve Accounts.

C. Cause to be levied and collected such taxes or assessments as may be necessary to maintain the land in good condition, meet payments on the loan, and make the deposits required by Sections 5 B and C, if for any reason gross revenues are insufficient.

D. Maintain complete books and records relating to the operation and maintenance of the land and its financial affairs and will cause such books and records to be audited annually at the end of each fiscal year and an audit report prepared, and will furnish the Government without request a copy of each annual audit report. The audit will be conducted by independent Certified Public Accountants or by licensed Public Accountants, licensed before December 31, 1970, who are certified or licensed by a regulatory authority of a state or other political subdivision of the United States. At all reasonable times, the Government shall have the right to inspect the land and to inspect and copy the records, accounts, and data of the Tribe relating thereto.

E. Maintain such insurance coverage as may be required by the Government.

F. Not borrow any money from any source or enter into any contract or agreement or incur any other liabilities in connection with making improvements to the land (exclusive of normal maintenance) without obtaining the prior written consent of the Government.

G. Not cause or permit any voluntary dissolution of its organization; merge or consolidate with any other organization; dispose of, transfer, or convey its title to any land or any part thereof or interest therein, by sale, mortgage, lease or other encumbrance, without obtaining the prior written consent of the Government.

H. Not modify or amend its constitution in any way that would affect the Government's security without the written consent of the Government.

Section 7. (Security Instruments) In order to secure the payment of the principal and interest or the note and any related obligations of the Tribe to the Government the ______ (Appropriate Official) and ______ (Appropriate Official) of the Tribe are hereby authorized and directed to execute and deliver a good and sufficient security instrument encumbering the land or other property and an assignment of revenues and funds held in the United States Treasury for the Tribe. The security instrument shall give the Government the lien on the land, Tribal revenues, Tribal Treasury funds or other property and said officials are authorized and directed to acquire such subordination agreements as are necessary to achieve the required priority.

Section 8. (Refinancing) If at any time it shall appear to the Government that the Tribe is able to refinance the loan, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the Tribe will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take such action as may be required in connection with such refinancing loan.

Section 9. (Waiver of Immunity) In order to secure the payment of the principal and interest of the note and any related obligations, the Tribe hereby waives for the benefit of the Government any immunity from suit or liability which it may possess except that this waiver shall not extend to the acquiring of any judgment, lien, or attachment upon the property of the Tribe other than property of the Tribe other than property specifically pledged, assigned, or mortgaged to the Government in connection with this loan provided that if no real estate is mortgaged to the Government this waiver shall extend to acquiring of judgment, lien or attachment on real estate purchased with the loan herein authorized.

Section 10. (Resolution a Contract) The provisions of this resolution shall constitute a contract between the Tribe and the Government so long as the loan made or insured by the Government remains unpaid.

Section 11. This resolution shall take effect and be in force immediately.

The vote was:

YEAS: ______

NAYS: ______

ABSENT: ______

Date ______

______
(Appropriate official)

______
(Appropriate official)

CERTIFICATION

I, the undersigned, as ———————(Appropriate Official) of the ———— hereby certify that the Tribal Council or such Tribe is composed of ——— members, of whom ——— (constituting a quorem) were present at a meeting thereof duly called and held on the ——day of ————, 19 ——; that the foregoing resolution was adopted at such meeting by the affirmative vote of ——— members of such Council and that said resolution has not been rescinded or amended in any way.

Dated this ——— day of ————, 19 ———.

————————————————

Secretary of ——————————

[39 FR 3662, Jan. 22, 1974, as amended at 46 FR 36106, July 14, 1981]

EXHIBIT C—ASSIGNMENT OF TRIBAL INCOME AND FUNDS

Whereas, the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (hereinafter called the "FmHA") is the holder or insurer of a promissory note (hereinafter called the "Note") in the sum of ———— bearing interest at the rate of ———— percent per annum, and

Whereas, ther Note was given by ———— (hereinafter called the "Tribe") to evidence the indebtedness incurred by the Tribe under a loan (hereinafter call the "Loan" made or insured by the FmHA, and

Whereas, Tribal Council Resolution No. ———— dated ————, authorized the acceptance of the Loan and the issuance of the Note and pledged and assigned income and funds as security for the payment thereof; and

Whereas, the Tribe has entered into a subordination agreement with the United States Department of the Interior, Bureau of Indian Affairs (hereinafter called the BIA), whereby the General Assignment of Income dated ———— and an Assignment of Income dated ———— in favor of the BIA is fully subordinated to the Assignment made herein;

Now, therefore, in consideration of the FmHA's making or insuring the Loan and to secure the payment when due of the installments on the Note, the Tribe does hereby grant, convey, pledge and assign to the FmHA (1) all annual gross income from the land purchased with the loan, and (2) all annual gross income from other sources. If the Tribe shall pay the entire principal of and interest on the Note, this Assignment shall terminate and be of no further force and effect.

In Witness Whereof, the ———— Tribe of the ———— Reservation causes this Assignment to be executed by its President and its Tribal seal to be affixed and duly attested.

(Seal) ———————— Tribe of the ———————Reservation.

Attest: By ————————————

(Appropriate Official)

Date ————————

The terms and conditions of the foregoing Assignment are hereby agreed to as of the date hereof.

BUREAU OF INDIAN AFFAIRS

U.S. Department of the Interior

By ————————————

Title ————————————

EXHIBIT D—SUBORDINATION AGREEMENT

This Agreement, dated ————, between the United States of America, Department of the Interior (hereinafter called the "BIA", and the ———— tribe of the ———— Reservation (hereinafter called the "Tribe"), for the benefit of the Tribe and to induce the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (hereinafter called the "FmHA"), to make or insure a loan to the Tribe:

Witnesseth:

Whereas, under date of ————, the Tribe executed and delivered to the BIA a "General Assignment and Assignment of Income" (hereinafter called the "General Assignment"), a copy of which is attached hereto and marked Exhibit A; and under date of ———— an "Assignment of Specific Income" a copy of which is attached hereto and marked Exhibit B, and Whereas, the FmHA has offered to loan or insure a loan to the Tribe in the sum of ———— for the purpose of paying part or all of the cost of acquiring interests in approximately ———— acres of real estate within its reservation pursuant to the provisions of the Act of April 11, 1970, Pub. L. 91-229; and

Whereas, FmHA requires that the annual gross income from the real estate purchased with the loan and the annual gross income from all other sources in such amount as may be necessary to pay debt service on such loan be pledged to pay the principal and interest on the loan; and

Whereas, the BIA is willing to subordinate to FmHA as security for said loan its rights under the General Assignment and under the Assignment of Specific Income to a lien on the income of the Tribe from all sources:

Now, Therefore, the BIA does agree as follows:

1. That the right it has under the General Assignment and under the Assignment of Specific Income as referred to in the first WHEREAS above, or any other instrument not mentioned herein to receive the income derived by the Tribe from all sources shall be in all respects subordinate, subject to and junior in right to the right of FmHA in and to said income as said rights are created and defined in the Assignment Pledge Agreements, or other agreements now or hereafter given resulting from the loan from the Farmers Home Administration to the Tribe.

2. That this subordination Agreement shall be effective as of the date hereof.

Dated this ——— day of ————, 19——.

———————————— Tribe of the
———————————— Reservation
By ————————————

UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR

By ————————————
Title ————————————

SUBCHAPTER C—[RESERVED]

SUBCHAPTER D—GUARANTEED LOANS

PART 1841—GENERAL PROVISIONS

Sec.

1841.1—1841.45 [Reserved]
1841.46 Loan servicing
1841.47 Renewal policy with regard to 80 percent guaranteed emergency livestock (EL) loans approved before June 16, 1975.
1841.48—1841.59 [Reserved]
1841.60 Transfer and assumption—general.
1841.61 Eligible transferee—full assumption.
1841.62 Ineligible transferee—full assumption.
1841.63—1841.65 [Reserved]
1841.66 Liquidation—general provisions.
1841.67 Loss settlement options (Payment of loss before or after liquidation, acceptance of assignment of loan, acceptance of title to property).
1841.68-1841.74 [Reserved]
1841.75 Access to records of lenders and holders.

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Sec. of Agri. (7 CFR 2.23); delegation of authority by the Asst. Sec. for Rural Development (7 CFR 2.70), unless otherwise noted.

SOURCE: 38 FR 29039, Oct. 18, 1973, unless otherwise noted.

§§ 1841.1-1841.45 [Reserved]

§ 1841.46 Loan servicing.

The holder is responsible for loan servicing. The term "servicing" as used in this Handbook includes all actions that are necessary after loan closing to collect the indebtedness and to protect the security and security rights. This involves, but is not limited to, obtaining and maintaining compliance with the provisions of the loan and security instruments, any supplementary agreements, and this Handbook. The term "servicing" also includes transfer and assumption and liquidation, except in those instances in which more specific terminology is used with respect to those matters. The specific servicing functions involved in transfers and assumptions and liquidations are set forth under those headings in this Handbook. Among the holder's more significant general servicing functions are those involved in seeing that:

(a) *Collections of indebtedness.* Indebtedness is collected as it falls due (from the borrower, third party converters, or other parties liable), and transfer and assumption or liquidation action, if approved, is taken as provided for under those respective headings in this Handbook.

(b) *Hazard insurance.* Adequate hazard insurance (as available and needed for the type of property and operation involved) is obtained and kept effective on the insurable security property, with loss payable clause in favor of the holder as mortgagee or secured party.

(c) *Taxes.* Taxes and any assessments or ground rents against or affecting the security property are paid.

(d) *Litigation.* The loan and security are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigative or third party actions.

(e) *Loss payments and compensation awards.* Any insurance loss payments condemnation awards, or similar proceeds are applied on the guaranteed loan in accordance with lien priorities on which the guarantee was based; or to a rebuilding or otherwise acquiring needed replacement security property of at least equal security value with the written approval of FmHA and any other interested parties.

(f) *Sale of security property and disposition of proceeds.* The sale or other disposition of security property is not approved unless the guaranteed loan is paid in full or all proceeds are applied in accordance with the lien priorities on which the guarantee was based, except that:

(1) Proceeds from the disposition of basic security may be used to acquire property of similar nature, equal value, and equal lien priority when the holder and FmHA determine that such use is necessary for the success of the enterprise. Basic security means all real property, fixtures, foundation

herds, machinery and equipment serving as security for the guaranteed loan.

(2) Proceeds from the disposition of any nonbasic security property planned to be marketed in the regular course of business in going concern cases may be used for purposes which the holder determine(s) are necessary and proper in connection with the type of operation involved (including family living expenses in going concern Farmer loan cases.)

(g) *Protective advances.* No advances for purposes other than protection or preservation of the security or security property are made without FmHA's written approval. Such advances (often called "future" advances) for such protection or preservation include, but are not limited to, advances for taxes, annual assessments, any ground rents, and hazard insurance premiums affecting the security property.

(h) *Personal liability.* The borrower (any party liable) is not released from personal liability for all or any part of the guaranteed loan (except in transfer and assumption cases in which the full amount of the indebtedness is assumed).

(i) *Alteration of instruments.* No provisions of the loan or security instruments are altered without FmHA's written approval.

(j) *Compliance with laws and ordinances.* Compliance is made with all laws and ordinances applicable to the security property or to the lender or holder.

[38 FR 29039, Oct. 18, 1973, as amended at 41 FR 13931, Apr. 1, 1976]

§ 1841.47 Renewal policy with regard to 80 percent guaranteed emergency livestock (EL) loans approved before June 16, 1975.

(a) Pub. L. 94-35, an amendment to the Emergency Livestock Credit Act, enacted on June 16, 1975, changed guarantee provisions and the previous loan term and renewal provisions for EL loans from 3 years plus 2 years to 7 years plus 3 years. There is no authority to renew 80 percent guaranteed EL loans approved before June 16, 1975, when they reach the final maturity date described in the note. If a lender desires to change the terms of one of these loans to bring it current or for other reasons it may be done by making a new EL loan to refinance the unpaid balance owed on the existing one, provided the borrower qualifies for the new loan. This is authorized by § 1980.270 of Subpart C of Part 1980 of this chapter.

(b) If the maturity date on an 80 percent guaranteed loan has been reached and the lender does not want to make a new EL loan as authorized by § 1980.270 of Subpart C of Part 1980 of this chapter, the lender must liquidate if the loan remains unpaid. This is required because the contract guaranteeing the loan describes the loan note and is limited by its terms. The lender may be allowed a reasonable time to close out the loan after the maturity date has arrived without full payment being made. To this extent, the Contract of Guarantee does not terminate automatically at the maturity date. However, the lender may not continue with a borrower indefinitely.

(Sec. 10 Pub. L. 93-357, 88 Stat 392; delegation of authority by Sec. of Agri. 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[43 FR 28439, June 30, 1978]

§§ 1841.48–1841.59 [Reserved]

§ 1841.60 Transfer and assumption—general.

The transfer of security property by the borrower and assumption of guaranteed loan indebtedness by the transferee will be handled as provided for herein. In transfer and assumption cases, preference will be given to applicants who, after the transfer and assumption are made, will meet the eligibility requirements for the type of loan involved. If the transferee will make any cash down payment in connection with the transfer and assumption, or if any security property is to be sold before the transfer and assumption, the amount of such cash down payment or sale proceeds should be credited on the transferor's guaranteed loan debt before the transfer and assumption are closed. A County Committee certification will not be required. The original borrower may be released from personal liability since the entire indebtedness is being assumed. As stated in § 1980.6, where appropriate in this Handbook, "liquidation" and "loan" shall be construed to mean "transfer and assumption," "promissory note" shall be construed to mean "assumption agreement," and "borrower" shall be construed to mean "transferee."

[38 FR 29039, Oct. 18, 1973, as amended at 42 FR 44717, Sept. 6, 1977]

§ 1841.61 Eligible transferee—full assumption.

An "eligible transferee" is a person who meets the eligibility requirements for the type of loan involved.

(a) *Assumption agreement.* The assumption will be made on Form FmHA 449-8, "Assumption Agreement for Guaranteed Loans (Same terms)," if there is no change in any of the loan terms. If any change is made, Form FmHA 449-7, "Assumption Agreement for Guaranteed Loans (New terms)," will be used.

(b) *Payment schedule.* The promissory note repayment schedule cannot be changed by the Assumption Agreement unless the change is approved in writing by FmHA, and also by the present debtors if they are not released from personal liability. Therefore, if a change in the repayment schedule is contemplated, the holder will request FmHA's approval of the proposed repayment schedule before any other action is taken to consummate the transfer and assumption. Any new repayment schedule cannot be longer than the payment schedule in the promissory note. The holder's request will be accompanied by:

(1) An explanation of the reasons for the proposed change in the repayment schedule.

(2) A statement that the holder's determination required by paragraph (c) of this section can be made.

(3) Advice as to whether the present debtors will sign the assumption agreement to indicate their continued liability or will be released from personal liability. If FmHA concurs in the proposed repayment schedule, it will so advise the holder in writing and the holder may proceed with the transfer and assumption.

(c) *Determinations by holder.* Before the transfer and assumption are consummated, the holder must determine that all of the following conditions and requirements can be met:

(1) The transferee is eligible for the type of loan involved.

(2) The transferee will acquire all of the property securing the guaranteed loan balance.

(3) The transferee cannot acquire the security property without the guaranteed loan credit.

(4) The market value of the security property is equal to or more than the amount assumed plus the amount owed on any prior liens.

(5) The existing liens and lien priorities will be maintained or improved.

(6) The transferee appears to have the ability and desire to pay the amount to be assumed.

(7) Proper hazard insurance will be continued in effect.

(8) Any applicable Truth in Lending requirements will be met.

(9) The transaction can be properly closed and the conveyance instruments will be recorded, if recordable.

(d) *Closing transfer and assumption.* As soon as the holder finds that it will be able to make the determinations required in paragraph (c) of this section and has received FmHA's approval of any change in the interest rate or repayment schedule, the holder may proceed with closing the transfer and assumption transaction. The closing will include, but will not be limited to, obtaining execution and delivery of the conveyance instruments and the assumption agreement, compliance with any Truth in Lending requirements, and recordation of said conveyance instruments, if recordable.

(e) *Contract of Guarantee.* The existing Contract of Guarantee will continue in effect, so a new Contract of Guarantee will not be issued. However, as soon as the transfer and assumption have been completed, the holder will so indicate on the original Contract of Guarantee by inserting a check in the Assumption Agreement box and inserting the name of the assuming party and the date of the Assumption Agreement in the spaces provided for those purposes on the contract. When FmHA and the Finance Office receive their copies of the Assumption Agreement, they will make the same insertions, in their copies of the Contract of Guarantee.

(f) *Material furnished by holder to FmHA after closing.* Immediately after the transfer and assumption have been closed, the holder will furnish to FmHA:

(1) Two conformed copies of the executed assumption agreement.

(2) A statement showing:

(i) What changes, if any, have been made in the promissory note repayment schedule.

(ii) That all of the conditions and requirements of paragaph (c) of this section have been met.

(iii) That insertions have been made in the original Contract of Guarantee as required by paragraph (e) of this section.

(iv) Whether the present debtors have been released from personal liability or have signed the agreement of continued personal liability on the bottom of the assumption agreement.

(g) *Conformed copies—sent to and checked by FmHA and Finance Office.* When FmHA receives the two conformed copies of the executed assumption agreement and the original statement from the holder as required in paragraph (f) of this section, it will examine them to see whether they are proper in all respects.

(1) If FmHA finds any errors or omissions in the conformed copies, it will return the defective material to the holder so that it may be corrected. If the original assumption agreement contains the same defects, it will first have to be corrected and the corrections initialed by the assuming parties and the holder, and also by the present debtors if they will remain personally liable.

(2) If FmHA finds the material to be in proper order, either before or after correction, it will send one copy of the assumption agreement to the Finance Office for loan identification and future accounting purposes. If the Finance Office finds any errors in amounts or calculations in its copy, it will return the copy to FmHA so the matter may be handled with the holder in the same manner as set forth in paragraph (g)(1) of this section.

§ 1841.62 Ineligible transferee—full assumption.

An "ineligible transferee" is a person who does not meet the eligibility requirements for the type of loan involved.

(a) *Assumption agreement.* The assumption will be made on Form FmHA 449-7, "Assumption Agreement for Guaranteed Loans (New Terms)."

(b) *Interest rate and payment schedule.* Since the promissory note repayment schedule (and probably the interest rate) will be changed in the Assumption Agreement, the present debtors will have to sign the agreement of continued liability on the bottom of the assumption agreement if they are not to be released from personal liability.

(c) *Term and interest rate.* The term of the assumption cannot exceed 5 years for operating type loans or 10 years for real estate type loans, except that in real estate type loan cases the term may be up to 15 years if FmHA makes a written determination that a period longer than 10 years is necessary to protect the financial interest of FmHA as guarantor. The interest rate may be any legal rate agreed to by the holder and the assuming parties.

(d) *Determinations by holder.* Before the transfer and assumption are consummated, the holder must obtain FmHA's approval of the transaction. As a basis for obtaining that approval, the holder must furnish FmHA a statement showing:

(1) That the transferee is not eligible for the type of loan involved.

(2) That the proposed transfer and assumption appear to be the best method for most adequately protecting the financial interests of the holder and FmHA.

(3) That the market value of the security property to be transferred is equal to or more than the unpaid balance on the guaranteed loan plus any prior liens, or that the financial situation of the transferee is such that any difference could be readily collected.

(4) That the conditions and requirements of § 1841.61(c) (2), (5), (6), (7), (8), and (9) can be met.

(5) The proposed interest rate to the transferee; and that the proposed term of the assumption is necessary and meets the requirements of paragraph (c) of this section.

(6) Whether the present debtors will sign an agreement of continued liability or will be released from personal liability.

(e) *Approval by FmHA.* If FmHA concurs in the holder's determinations and agrees that the transfer and assumption should be made as proposed, it will send a letter of approval to the holder. If the assumption term exceeds the 10 year limitation in paragraph (c) of this section for real estate type loans, the letter will contain FmHA's express determination that the longer term is necessary to protect the FmHA's financial interests as guarantor. If FmHA determines that it cannot approve the proposed transaction, it will inform the holder in writing of the reasons. If the holder satisfies FmHA's objections, it may resubmit the matter to FmHA for reconsideration.

(f) *Contract of Guarantee.* The existing Contract of Guarantee will continue in effect, so a new Contract of Guarantee will not be issued. The same insertions will be made in the original and copies of the Contract of Guarantee as provided in paragraph (e) of § 1841.61.

(g) *Closing transfer and assumption.* Upon receipt of FmHA's approval letter, the holder may proceed with closing the transfer and assumption transaction. The closing will include, but will not be limited to, obtaining execution and delivery of the conveyance instruments and the assumption agreement, compliance with any Truth in Lending requirements, and recordation of said conveyance instruments, if recordable.

(h) *Material furnished by holder to FmHA after closing.* Immediately after the transfer and assumption have been closed, the holder will furnish to FmHA:

(1) Two conformed copies of the executed assumption agreement.

(2) A statement showing:

(i) That all of the conditions and requirements of paragraph (d) of this section have been met in accordance with the approval letter issued by FmHA under paragraph (e) of this section.

(ii) That the insertions have been made in the original Contract of Guarantee as required in paragraph (f) of this section.

(iii) Whether the present debtors have been released from personal liability or have signed the agreement of continued liability on the bottom of the assumption agreement.

(i) *Conformed copies—sent to and checked by FmHA and Finance Office.* The procedure set forth in paragraph (f) of § 1841.61 will be followed.

(j) *Interest subsidy.* FmHA will not pay any interest subsidy to the holder in these cases in which the debt is assumed by an ineligible transferee.

§§ 1841.63–1841.65 [Reserved]

§ 1841.66 Liquidation—general provisions.

If either the holder or FmHA concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, it will notify the other party and the matter will be handled as follows:

(a) *Holder's proposed method of liquidation.* Along with the holder's notification to FmHA or within 10 days after the holder receives a notification from FmHA, the holder will advise FmHA of its proposed method of liquidation and will provide FmHA with all available information concerning:

(1) The borrower's assets, including claims, contracts, accounts receivable and other existing and contingent assets not serving as security for the loan.

(2) Its estimated value of all of the borrower's assets, including security and nonsecurity property and other assets.

(3) The holder's proposed method of making the maximum collection possible on the entire indebtedness, including that covered by the FmHA guarantee and that not so covered.

(b) *FmHA's response to liquidation proposal.* Within 30 days after receipt of such notification from the holder FmHA will inform the holder:

(1) Whether FmHA concurs in the holder's proposed method of liquidation.

(2) Which loss settlement option provided in § 1841.67 FmHA has selected. To assist FmHA in selecting the loss settlement option, the original lender and present holder will, upon request, provide FmHA such information, and such legal and other instruments and documents (or copies thereof or access thereto), as the lender and holder have with respect to the guaranteed loan transaction.

(c) *Acceleration.* If FmHA does not select less settlement option (a) in § 1841.67, "Pay loss before liquidation," or loss settlement option (b) in § 1841.67, "Accept assignment of loan," the holder will proceed as expeditiously as possible with acceleration of the indebtedness, including giving any notices and taking any other actions required by the security instruments or law. A copy of the acceleration notice or other acceleration document will be sent to FmHA. If FmHA selects said option (a), the holder may accelerate the indebtedness if it desires to do so. If FmHA selects said option (b), the indebtedness will not be accelerated.

(d) *Determination of values.* If FmHA selects loss settlement option (a) "Pay loss before liquidation," or loss settlement option (b) "Accept assignment of loan," then within 15 days after FmHA has advised the holder of such selection (unless a longer period is agreed to by the holder and FmHA in an individual case), or preferably while the acceleration proceedings are in process, the holder and FmHA will appraise and endeavor to agree on the market value of the security property and any additional amounts that can be readily collected from the borrower (additional debt payment ability). The term "market value" as used in this Handbook means the amount for which the property would sell for its highest and best use at voluntary sale. If FmHA selects loss settlement option (c) in § 1841.67 "Accept title to property from registered holder," or loss settlement option (d) in § 1841.67 "Pay loss after liquidation," the determination of values will be made at the time specified in the applicable paragraph.

(1) If the holder and FmHA cannot agree on the value of the security property and any additional debt payment ability of the borrower within 15 days after their appraisals are required to be made, they shall within the next 15 day period or earlier if possible, select a disinterested appraiser who will determine such values. The appraiser will make the appraisal report to the holder and FmHA.

(2) The appraiser's valuations will be used in calculating the loss if FmHA agrees that they are correct. Within 10 days after FmHA receives a copy of the appraiser's report, it will notify the holder in writing whether it agrees with the appraiser's valuations.

(3) The disinterested appraiser's fee will be shared equally by FmHA and the holder.

(e) *Determination of loss.* The amount of the loss to be paid by FmHA will be initially calculated by the holder on Form FmHA 449-30, "Report of Loss."

(1) Within 15 days after the determination of values as provided for in paragraph (d) of this section, the holder will execute the original Report of Loss and present it and one conformed copy to FmHA for approval.

(2) If FmHA has any question regarding the amounts set forth in the Report of Loss, it will investigate the matter. The holder will make its records available to, and otherwise assist FmHA in making this investigation. If FmHA finds any discrepancies, it will contact the holder and get the necessary corrections made as soon as possible. When FmHA finds the Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

(3) After the Report of Loss has been tentatively approved, FmHA will send the original Report of Loss to the Finance Office for issuance of a Treasury check in payment of the amount owned by FmHA to the holder. The Finance Office will analyze these reports to see whether the amount

claimed is correct. If the Finance Office finds the amount claimed by the holder to be incorrect, the Treasury check will be for the amount the Finance Office finds to be correct. The Finance Office will send an explanation of any changes in amounts along with the Treasury check.

(f) *Maximum amount of loss payment to holder.* Notwithstanding any other provisions of this Handbook, the amount payable by FmHA to the holder for loss sustained on the loan and future advances cannot exceed 90 percent of the loan principal advanced by the lender to the borrower under the guaranteed loan promissory note or assumed by the assuming parties under an assumption agreement in a transfer and assumption case.

(g) *Application of FmHA loss payment.* The amount of the loss payment by FmHA will be applied by the holder on the guaranteed loan debt.

§ 1841.67 Loss settlement options (Payment of loss before or after liquidation, acceptance of assignment of loan, acceptance of title to property).

FmHA will have the option to settle its obligation under the Contract of Guarantee in any of the following ways. The provisions of § 1841.66 will apply regardless of which option is selected.

(a) *Pay loss before liquidation.* If FmHA elects to pay the loss covered by the Contract of Guarantee before the liquidation action is taken by the holder or a third party, upon receipt of the Report of Loss from the holder, the Finance Office will promptly have a U.S. Treasury loss payment check issued and mailed to the holder. If the liquidation is being conducted by the holder and it subsequently decides:

(1) Not to liquidate, it will refund to FmHA any amount paid to it by FmHA for liquidation costs.

(2) To employ a different method of liquidation for which the cost is less than the amount paid to it by FmHA for liquidation costs, it will refund the difference to FmHA.

(b) *Accept assignment of loan.* Since the lender's forms of promissory notes and security instruments will be used and they will vary considerably, FmHA will select this option only in unusual cases. If FmHA elects to take an assignment of the loan:

(1) Upon receipt of the Report of Loss, the Finance Office will send the Treasury check to FmHA for delivery to the holder when the holder furnishes the following items in the form required by FmHA:

(i) Promissory note endorsed payable to the order of the United States of America.

(ii) Security instruments with any required assignments thereof (filed or recorded, if required).

(iii) Assignment of any escrow agreement and any funds in the excrow account, and any claims for protective advances already made.

(iv) Evidence of title and ownership of the note, security instruments and security property.

(v) Any other instruments required by FmHA to determine or perfect its ownership of the guaranteed loan and related rights.

(2) Any net rental or other income that has been received by the holder from the security property (section VII A 3 of Report of Loss) should be applied on the guaranteed loan debt before FmHA accepts an assignment of the loan. The holder's right to funds in the escrow account, if any, and the account itself will be assigned to FmHA.

(c) *Accept title to property from registered holder.* If FmHA elects to wait and accept a conveyance of the former security property from the holder after the holder has acquired title to it by voluntary conveyance in lieu of foreclosure or by purchase at foreclosure or other forced sale:

(1) A determination of value of the former security property will be made within 30 days (unless the holder and FmHA agree on a longer period) after title (record title, if conveyance can be filed or recorded) is vested in the holder, except that if a period of redemption exists, this section, at FmHA's option, may be delayed until the applicable period of redemption has expired. The Report of Loss will be prepared on the same basis as if the borrower still owned the property.

(2) In section IV C of the Report of Loss, the total market value of the security property will be the appraised

value as determined under paragraph (d) of § 1841.66.

(3) The Finance Office will send the Treasury check to the FmHA for delivery to the holder when the holder furnishes the following items on the form required by FmHA.

(i) General Warranty Deed covering the acquired real property (FmHA may also require a policy of owner's title insurance if it is unwilling to rely on the grantor's general warranty, the cost to be shared equally by FmHA and the holder).

(ii) Bill of Sale or other required conveyance containing a general warranty of title to any acquired personal property (and any fixtures not covered by a warranty deed).

(iii) All other title evidence the holder has with respect to the real or personal property being conveyed, such as abstracts of title, title opinions or certificates, tax receipts, etc.

(iv) Possession of all conveyed property.

(v) Any other instruments required by FmHA to perfect its ownership and possession of the conveyed property.

(d) *Pay loss after liquidation.* FmHA may decide to wait and pay the loss covered by the Contract of Guarantee after liquidation by the holder or a third party, regardless of who acquires the security property in the liquidation proceedings. If FmHA chooses this loss settlement option, it may elect to pay the loss before or after any applicable redemption period. In any event, under this option, FmHA will not take title to said property.

(1) The provisions of paragraph (c)(1) of this section with respect to determination of values and preparation of the Report of Loss are applicable here.

(2) The market value of the security property will be appraised value as determined under paragraph (d) of § 1841.66 or the acquisition price at a forced sale, whichever amount is more.

(3) The Finance Office will send the loss payment check direct to the holder.

§§ 1841.68–1841.74 [Reserved]

§ 1841.75 Access to records of lenders and holders.

The lender and holder will permit representatives of FmHA (or of other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of the records of the lender or holder pertaining to FmHA guaranteed loans. Such inspection and copying may be made during regular office hours of the lender or holder.

PART 1843—FARMER LOANS

Sec.

1843.1—1843.9 [Reserved]
1843.10 Loan making and servicing.
1843.11—1843.19 [Reserved]
1843.20 Transfer and assumption.
1843.21—1843.29 [Reserved]
1843.30 Liquidation.

AUTHORITY: 7 U.S.C. 1989; delegation of authority by the Sec. of Agri. (7 CFR 2.23); delegation of authority by the Asst. Sec. for Rural Development (7 CFR 2.70).

NOTE: This Part 1843 supplements the provisions of Part 1841 of this volume with respect to Farmers Loans guaranteed by the Farmers Home Administration (FHA).

§§ 1843.1-1843.9 [Reserved]

§ 1843.10 Loan making and servicing.

(a) The following provisions with respect to loan making and servicing, in addition to those in §§ 1980.113 and 1841.46 of this chapter, are applicable to Farmer Loans.

(b) The lender is responsible for seeing that any buildings or other improvements or major land development to be provided with loan funds are properly completed within a reasonable time, free of any mechanics, materialmen's or other liens that would affect the lien priority which the lender advised FmHA that the lender's security instruments would have. All major construction, major repairs, and major land development must be performed under contract, unless the lender determines that performance can be satisfactorily accomplished under the borrower method. As soon as such construction, repair, or land development involving use of loan funds has been completed, the lender will furnish to FmHA a certificate stating that it has been completed in accordance with the plans and specifications submitted to FmHA in connection with the Request for Conditional Commitment to Guarantee Loan. The certificate will be provided on Form FmHA 449-11, Certificate of Acquisition or Construction.

[38 FR 29051, Oct. 18, 1973, as amended at 39 FR 15869, May 6, 1974; 42 FR 44717, Sept. 6, 1977; 45 FR 1594, Jan. 8, 1980]

§§ 1843.11–1843.19 [Reserved]

§ 1843.20 Transfer and assumption.

The following provisions with respect to transfer and assumption, in addition to those in §§ 1841.60, 1841.61 and 1841.62, are applicable to Farmer Loan cases.

(a) *Not substitute for graduation.* This procedure for transfer to and assumption by an ineligible transferee will not be used as a substitute for requiring the transferor to graduate to credit not backed by a Contract of Guarantee if he is able to do so in accordance with the provisions of the security instruments. When a transferor will receive a substantial down payment in connection with the transfer of the security property to the transferee, careful consideration should be given to the ability of the transferor to graduate to other sources of credit without the guarantee. Likewise, in such a situation, careful consideration should be given to the ability of the transferee to handle the transaction with his own resources or to obtain any needed credit at reasonable rates and terms without the guarantee.

[38 FR 29051, Oct. 18, 1973, as amended at 39 FR 15869, May 6, 1974]

§§ 1843.21–1843.29 [Reserved]

§ 1843.30 Liquidation.

The following provisions with respect to liquidation, in addition to those in §§ 1841.66 and 1841.67 are applicable to Farmers Loans.

(a) *Graduation of borrowers.* One of the defaults that may occur involves failure or refusal of a Farmer Loan borrower to graduate to credit not backed by a Contract of Guarantee, after FmHA determines that he is in a position to graduate under the provisions of the security instruments. Every 5 years after issuance of the Contract of Guarantee, the holder will furnish to FmHA a report on each Farmer Loan borrower's financial situation. FmHA will use the report in determining whether the borrower is able to graduate to credit without a Contract to Guarantee. If FmHA so determines on the basis of the holder's report and any other information, or if such a determination is made by FmHA at any other time, it will notify the holder in writing to that effect, explaining the basis of the determination. If the lender disagrees, it will notify FmHA in writing of the reasons for its disagreement, and FmHA will reconsider the matter. If the holder does not disagree with FmHA's initial determination, or if FmHA does not change its mind on reconsideration, FmHA will request the borrower to obtain the credit without the FmHA guarantee. If the borrower fails or refuses to do so, FmHA will notify the holder and it will proceed with liquidation as in the case of any other substantial default, otherwise the Contract of Guarantee will be unenforceable. See § 1843.20 to the effect that transfer and assumption is not a substitute for graduation of borrowers to credit without an FmHA guarantee.

[38 FR 29051, Oct. 18, 1973, as amended at 39 FR 15869, May 6, 1974]

PART 1845—FmHA EMERGENCY LIVESTOCK LINE OF CREDIT GUARANTEES

Sec.

1845.1 General.
1845.2 Program objective.
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1845.4 Lender.
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1845.17 Loan fee and charges.
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1845.28 Appeal procedure.
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1845.32 Loan servicing.
1845.33 Liquidation of a claim under a Contract of Guarantee.
1845.34 Transfer and assumption of EL loan advances—general.
1845.35 Eligible transferee—full assumption.
1845.36 Ineligible transferee—full assumption.
1845.37 Termination of Contract of Guarantee.
1845.38 [Reserved]
1845.39 Responsibilities of FmHA officials.
1845.40 [Reserved]
1845.41 County Office file.

AUTHORITY: Sec. 10, Pub. L. 93-357 as amended; delegation of authority Secretary of Agriculture (7 CFR 2.23); delegation of authority by Assistant Secretary for Rural Development (7 CFR 2.70), unless otherwise noted.

SOURCE: 40 FR 30623, July 22, 1975, unless otherwise noted.

§ 1845.1 General.

Emergency Livestock (EL) line of credit guarantees issued before August 19, 1977, will be administered, and the guaranteed loans serviced and liquidated, in accordance with this Part 1845.

[42 FR 51606, Sept. 29, 1977]

§ 1845.2 Program objective.

The basic objective is to make more credit available during the period authorized by Pub. L. 93-357 in the form of "line of credit" loan advances guaranteed by FmHA for bona fide farmers and ranchers who are primarily and directly engaged in agricultural production, and who have substantial livestock operations, in order that they may continue their normal farming or ranching operations.

[40 FR 30623, July 22, 1975, as amended at 41 FR 55321, Dec. 20, 1976]

§ 1845.3 Definitions.

The following general definitions are applicable to the terms used in this regulation and related forms.

(a) *Act.* The Emergency Livestock Credit Act of 1974 (Pub. L. 93-357); as amended by Pub. L. 94-35, and Pub. L. 94-517.

(b) *Citations of Code of Federal Regulations (CFR) and* FEDERAL REGISTER *(FR) material.* Citations of the CFR include amendments and revisions of the cited material published in the FR pending issuance of the next applicable CFR book. All CFR sections, parts, and subparts cited in the regulations are in this Chapter XVIII unless otherwise indicated.

(c) *FmHA.* The United States of America acting through the Farmers Home Administration, an Agency of the United States Department of Agriculture.

(1) *FmHA officials.* Unless otherwise indicated, the term FmHA officials also means the County Supervisor or Acting County Supervisor and District Director or Acting District Director serving the county involved.

(2) *FmHA offices.* References to the National Office, Finance Office, State Office, County Office, State Director, District Director, County Supervisor, or other FmHA office or official should be read as prefaced by "FmHA."

(d) *Finance Office.* The office which maintains the FmHA financial records. It is located at 1520 Market Street, St. Louis, Missouri 63103, (Phone 314-622-4400).

(e) *United States.* The term "United States" means the United States itself, any of the 50 states, Puerto Rico, and the Virgin Islands, as appropriate in the context in which the term is used.

(f) *State.* Any of the fifty States, Puerto Rico, or the Virgin Islands.

(g) *Guaranteed line of credit.* EL loan advances made and serviced by a lender subject to a maximum amount agreed to by the lender and FmHA which is specified in a Contract of Guarantee.

(h) *Borrower.* All parties liable for EL loan advances or any part thereof made subject to an approved line of credit.

(i) *Lender.* The legally organized financial institution making and servicing the guaranteed EL loan advances subject to an approved line of credit. The purchaser of the entire guaranteed and unguaranteed loan advances will also be known as the lender in this regulation.

(j) *Protective advances.* Payments made by the lender to third parties to protect or preserve security property or liens thereon.

(k) *Loan servicing.* All actions that are necessary after loan closing to collect the indebtedness and to protect the security and security rights. This involves, but is not limited to, obtaining and maintaining compliance with the provisions of the EL loan advances and security instruments, any supplementary agreements, and this regulation. The term "servicing" also includes transfer and assumption and liquidation.

(l) *Liquidation actions*—(1) *Liquidation of the EL guarantee.* The final settlement of a guarantee claim when the lender or FmHA determines such action is needed to protect their interest.

(2) *Liquidation of the security.* The disposition of collateral servicing as security for a guaranteed EL line of credit by the lender after final settlement of a guaranteed claim.

(m) *Basic security.* All real estate property, fixtures, foundation herds, machinery, and equipment serving as security.

(n) *Non-basic security.* All normal income security property planned to be marketed in the regular course of business in going concern cases.

(o) *Market value.* The amount for which the property would sell for its highest and best use at voluntary sale.

(p) *Transfer and assumption terms.* In relation to transfer and assumption cases, where appropriate, "liquidation" and "loan" shall be construed to mean "transfer and assumption," "promissory note" shall be construed to mean "assumption agreement," and "borrower" shall be construed to mean "assuming party" or "transferee."

(q) *Hazard insurance.* Includes fire, windstorm, lighting, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood, workmen's compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

(r) *Livestock.* The term "livestock" means beef cattle, dairy cattle, swine, sheep, goats, chickens, and turkeys, including dairy cattle raised and maintained for the primary purpose of marketing dairy products.

[40 FR 30623, July 22, 1975, as amended at 41 FR 55321, Dec. 20, 1976]

§ 1845.4 Lender.

(a)—(c) [Reserved]

(d) *Loan making and servicing office.* Each lender, or the purchaser of the entire amount of EL loan advances, must maintain an office (either its main or branch office or that of an agent) near enough to the security property location so it can properly and efficiently discharge its loan making or loan account servicing responsibilities.

(1) The lender will advise FmHA on Form FmHA 449-25, "Request for Contract of Guarantee (Emergency Livestock Loan)," or in letter form whether it plans to make and service the loan through its main office or through a branch office or agent.

(2) If at a subsequent date the lender plans to service the account through a different office or agent, it will advise FmHA in writing to that effect, giving the name, address, and other relevant information regarding the new office or agency arrangement.

(3) If the servicing arrangement proposed by the lender is not satisfactory to FmHA, it will inform the lender to that effect so that the lender may take whatever action is necessary to comply with FmHA's requirements.

(e) *Sale of all of the loan advances.* The lender may sell *all* of any loan advances, upon prior written FmHA approval, to another lender who will undertake the full responsibility to service the account. The Contract of Guarantee shall be assigned to such other lender. After FmHA approval of the new lender, Form FmHA 471-7, "Notice and Acknowledgment of Sale of Insured or Guaranteed Loan," will be completed by the seller and mailed to the FmHA Finance Office.

[40 FR 30623, July 22, 1975, as amended at 42 FR 51606, Sept. 29, 1977]

§ 1845.5 Regulations and forms.

Lenders should contact the local FmHA office for program details and FmHA forms. Copies of the Part 1845 may be obtained by writing to:

Director, Finance Office, Farmers Home Administration, USDA, 1520 Market Street, St. Louis, Missouri 63103.

Also, refer to the FmHA Fact Sheet pertaining to the Emergency Livestock Line of Credit Guarantees which is available in the local FmHA office.

§§ 1845.6—1845.9 [Reserved]

§ 1845.10 EL eligibility requirements.

To be eligible for an EL loan, an applicant must:

(a) *Citizen.* Be a citizen of the United States or a person who has been legally admitted for permanent residence in the United States. If a partnership, the principal partners must be citizens or such permanent residents of the United States. If a corporation, it must be incorporated under the laws of the United States, its principal stockholders must be citizens or such permanent residents of the United States, and the corporation must be authorized to carry on farming or ranching operations in the State in which the EL operation is being conducted. See § 1845.3 for definition of "State" and "United States." Any partner or stockholder owning or controlling as much as 20 percent interest in a partnership or corporation will be considered a principal partner or stockholder. If no person owns or controls as much as 20 percent, all partners and stockholders will be considered principal partners or stockholders.

(b) *Bona fide farmer or rancher.* Be a *bona fide* farmer or rancher (owner-operator, or tenant), doing business in the United States either as an individual, corporation, or partnership, which is recognized in the community as one whose chief occupation is farming or ranching, primarily and directly engaged in agricultural production, and having substantial operations in breeding, raising, fattening or marketing livestock, including dairy cattle raised and maintained for the primary purpose of marketing dairy products (hereinafter referred to as a livestock operation). *In the case of an individual loan applicant* the term "primarily and directly engaged in agricultural production" means that he derives more than 50 percent of his gross income from *his own* agricultural production *or* devotes more than 50 percent of his time to such production. The term "substantial livestock operation" means that he derives not less than 25 percent of his gross farm income from his own livestock operation, *or* devotes not less than 25 percent of his time to such operation, *or* has not less than 25 percent of his total capital investment in such operation. *In the case of a corporation or partnership loan applicant,* the term "primarily and directly engaged in agricultural production" means that the corporation or partnership derives more than 50 percent of its gross income from agricultural production, and that the shareholders or partners owning or controlling a majority interest in such corporation or partnership derive more than 50 percent of their gross income from their own or the corporation's or partnership's agricultural production, *and* devote more than 50 percent of their time to such production. The term "substantial livestock operation" means that the corporation or partnership derives not less than 25 percent of its gross farm income from its own livestock operation, *or* devotes not less than 25 percent of its time to such operation, *or* has not less than 25 percent of its total capital investment in such operation.

(1) Bona fide farmers and ranchers must be actually engaged in the livestock operations to be financed by the guaranteed EL line of credit. If the applicant is an individual, he must manage such livestock operation. If the applicant is a partnership or corporation, it must be managed by one or more of the partners or stockholders. An applicant who does not devote full time to the livestock operation may be considered the manager provided he (or the managing partners or stockholders) visits the farm at sufficiently frequent intervals to exercise control and see that the livestock operation is being carried on properly.

Any livestock operation that involves a full-time hired manager or management service does not qualify irrespective of the number of visits made by the partners or stockholders. In addition, bona fide farmers or ranchers do not include those commencing livestock operations or reentering such operations after July 25, 1974, or those engaged in farming, ranching, or livestock operations as a hobby or for tax shelter purposes; or those chiefly engaged in other business or employment.

(2) An applicant conducting livestock operations as an individual in different counties or locations may be considered for more than one EL contract when more than one lender is involved, if each lender is financing a separate enterprise, provided (i) identifiable separate security is given to each lender and (ii) the combined total amount of contracts for each line of credit for all lenders involved will not exceed $350,000.

(3) The fact that an EL loan is made to a corporation, partnership, or to individuals doing business as partners, inconnection with livestock operations being conducted by such entities, may disqualify the individual stockholder or partner from obtaining a separate EL loan. Conversely, the fact that an EL loan is made to an individual in connection with his individual livestock operation may disqualify a corporation or partnership in which he is a stockholder or partner from obtaining an EL loan. See § 1845.13(a) for more specific information regarding these interrelated situations.

(4) Individual members of a partnership, or individuals doing business jointly or as partners, will not receive individual loans to finance their interest in the joint or partnership livestock operation. The partnership or joint operation will be considered for one loan to cover the livestock operation being conducted jointly or as a partnership.

(5) An estate or trust; a corporation owned primarily by an estate, trust, other corporations, or other partnerships; a partnership composed primarily of an estate, trust, corporation, or other partnerships; or an applicant operating under an order of a bankruptcy court, is not considered to be a bona fide farmer or rancher for EL purposes.

(c) *Legal capacity.* Possess legal capacity to contract for the loan.

(d) *Ability and experience.* Possess the ability, industry, and experience necessary to carry out the proposed livestock operations to assure a reasonable prospect of success with the assistance of the loan, and honestly endeavor to carry out the undertakings and obligations required of the applicant in connection with the loan.

(e) *Credit elsewhere.* Be unable to provide the necessary funds from the applicant's own resources, or obtain sufficient credit from local commercial sources to finance the applicant's actual livestock operations needs without a guarantee. The applicant's equity in livestock, crops, chattels, real estate, and other assets and income will be considered in determining the applicant's ability to obtain such credit from other sources without a guarantee.

§ 1845.11 EL loan purposes.

EL loans may be guaranteed for purposes which are *essential* to carrying on livestock operations related to breeding, raising, fattening, or marketing livestock. The purposes are:

(a) Purchase of livestock for replacement or restocking purposes, but not to permit expansion of livestock operations beyond a level equal to the highest number during the eighteen months immediately preceding July 25, 1974.

(b) Purchase or production of livestock feed.

(c) Payment of customary and equitable charges for grazing permits and for the use of farm or ranch buildings, pasture land, and land for the production of feed crops.

(d) Hire, repair, or replace fixtures farm machinery, equipment necessary for livestock production, and marketing.

(e) Transportation of livestock, normally incurred in the livestock operation.

(f) Building or repair of fences and holding pens.

(g) Refinancing of secured and unsecured debts incurred for the livestock operation, when:

(1) Such refinancing is absolutely essential for the applicant to remain in business.

(2) The lending agency would not refinance the loan in the absence of a guarantee, and

(3) The lending agency is not currently refinancing similar loans to others without such a guarantee. The term "similar loans" means loans for like purposes, for comparable amounts and periods of time, and for which comparable security is required.

(h) Payment of real estate or personal property taxes and water or drainage taxes or assessments that must be paid to permit continuation of the livestock operation.

(i) Payment of premiums on insurance necessary to obtain or secure the loan.

(j) Repair or essential improvement of livestock water supplies, and providing any pollution abatement facilities which are necessary to comply with requirements of § 1845.19.

(k) Repair of existing irrigation systems necessary for livestock production.

(l) Payment of veterinary fees and charges for livestock medicines.

(m) Cost of hired labor used in livestock production.

(n) Costs of construction or repair and normal maintenance of farm and ranch buildings essential to continuance of the authorized level of operation including silos and other feed storage facilities necessary for livestock production.

(o) Purchase of fuel, seed, fertilizer, insecticides, farm supplies, and payment of other operating expenses that are essential to continuation of the livestock operations.

(p) Purchase any stock in a cooperative lending agency that is necessary to obtain the loan.

(q) Payment of a loan fee and costs incident to consummation of the loan as authorized in § 1845.17.

(r) Payment of essential family living expenses.

(s) Payment of not more than 1 year's installment(s) (Principal and interest) on debts secured by liens on chattels or real estate related to the livestock operation when a deferment on such obligations cannot be obtained.

(t) To permit eligible borrowers with existing EL loans to refinance such loans pursuant to paragraph (g) of this section, and receive an EL guaranteed line of credit.

§ 1845.12 Prohibited EL loan purposes.

No EL loan advance may be guaranteed which will:

(a) Establish or reestablish an applicant in livestock operations, or to permit an expansion of such operations beyond the level set forth in § 1845.11(a).

(b) Finance or refinance anything not essential to continuation of the livestock operations.

(c) To finance livestock or poultry feeding operations where the applicant does not maintain ownership of the feeders through the normal feeding period, or is only performing a service for others.

(d) To a landlord to furnish credit, equipment, or supplies to his tenant operators, whether share, cash, or standing rent is paid by the tenants.

(e) To enable an applicant to make major changes or adjustments in his livestock operation.

(f) To pay Federal or State income taxes, or to pay Social Security taxes payable by the borrower in his own behalf.

(g) To pay for labor performed by the borrower or members of his immediate family.

(h) To purchase passenger automobiles; or to purchase any other vehicles or machinery or equipment that is not essential to the livestock operation.

(i) To purchase machinery or equipment, or for supplies or labor which will be used in the handling, processing, or marketing of livestock products such as milk, eggs, wool, and mohair. However, this does not prohibit refinancing debts which have already been created for these purposes when they are part of an "overall" livestock operation indebtedness being refinanced with an EL loan under the conditions set forth in § 1845.11(g).

§ 1845.13 EL line of credit limitations and special provisions.

(a) *Total loans to applicants.* The total principal balance outstanding at any one time on guaranteed EL loan advances made to assist a livestock operation shall not exceed $350,000. If an individual owns or controls 20 percent or more of a corporation or partnership and they are engaged in the same or different livestock operations, the individual and the corporation or partnership will be considered as one entity for application of the $350,000 line of credit ceiling. If an individual owns or controls less than 20 percent or more of a corporation or partnership and the individual and corporation or partnership are engaged in separate livestock operations, the individual and the corporation or partnership will be considered as separate entities for application of the $350,000 line of credit ceiling. The following examples illustrate how these limitations are to be applied:

	Situation No. 1		Situation No. 2	
	Individual	Corporation or partnership	Individual	Corporation or partnership
(1) Individual loan applicant—Applies for and gets a loan as individual in the amount of	$350,000		$150,000	
(i) Owns 20 percent or more interest in a corporation or partnership that also applies for a loan to finance part of the same livestock operation or a separate livestock operation		000,000		$200,000
or				
(ii) Owns less than 20 percent interest in a corporation or partnership that also applies for a loan to finance:				
(A) Part of the same operation		000,000		200,000
(B) A separate livestock operation		$350,000		350,000
(2) Corporation or partnership loan applicant—Applies for and gets a loan as corporation or partnership in the amount of		350,000		150,000
(i) A stockholder or partner who owns 20 percent or more interest in the corporation or partnership also applies for a loan to finance a part of the same livestock operation or a separate livestock operation	000,000		200,000	
or				
(ii) A stockholder or partner who owns less than 20 percent interest in the corporation or partnership also applies for a loan to finance:				
(A) Part of the same operation	000,000		200,000	
(B) A separate livestock operation	350,000		350,000	

(b) *Guarantee limit.* Payments made pursuant to an EL line of credit guarantee shall not exceed: 90 percent of the *difference between* the total amount of principal and interest owed on any EL loan advance(s) made under an approved line of credit *and* the market value of such loan security less the amount owed on any prior liens (as agreed upon by the lender and FmHA) at the time a decision is made by the lender or FmHA that action other than transfer of the account is necessary for collection of the loan(s) under the terms of the security instruments and principal and interest indebtedness on secured approved protective advances. Refer to § 1843.33(a) when a lender and FmHA cannot agree on the market value of the security.

(c) *Guarantee coverage (full faith and credit).* The contract of guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it became such lender or which lender participates in or condones. The contract of guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. As used in this paragraph and in any contract of guarantee (including any now outstanding) in which the phrase appears, "use of loan funds for unauthorized purposes" refers to the situation in which the lender in fact agrees with the borrower that loan funds are to be so used and the phrase "unauthorized purpose" means any purpose not listed by the lender in the completed application as approved by FmHA. FmHA will not implement the provision contained in Form FmHA 449-27, "Contract of Guarantee" (7-17-75) which states: "This contract shall not cover any claims that may arise within 90 days of the date hereof."

(d) *County Committee certification.* A County Committee certification is required for an eligibility certification and approval of a line of credit ceiling. See §§ 1845.26 and 1845.40.

(e) *Personal liability.* The promissory note(s) will be signed by the applicant, and by any other parties (such as spouses, principal partners, or stockholders) required by the lender to provide needed repayment ability or security.

(f) *Separate lines of credit.* When the same lender is involved in an EL guaranteed and a separate line of credit and there will be like security for each, the EL guaranteed line of credit must be adequately secured by (1) a lien on separate security property that is clearly identifiable, or (2) a lien of a higher priority if the same property is used to secure both lines of credit. In the latter case when the same security secures both lines of credit the lender must agree in writing that the EL guaranteed line of credit will be paid first.

(g) *Lines of credit.* EL loan advances by a lender may be made through September 30, 1978, subject to a Contract of Guarantee *executed* on or prior to that date. The amount of loan advances outstanding at any one time under the guarantee may not exceed the line of credit ceiling set forth in the Contract of Guarantee.

(h) *Extension of guaranties.* New loan advances to be made after December 31, 1976, will not be automatically covered by "line of credit" guarantees issued before December 20, 1976, under terms of the Emergency Livestock Credit Act of 1974, as amended by Pub. L. 94-35. Any advance(s) under these guarantees after December 31, 1976, requires an extension of the guarantee.

(1) When lenders desire to continue making new advances to borrowers indebted under a guarantee issued prior to December 20, 1976, it will not be necessary to issue a new Form FmHA 449.27: *Provided,* The lender will certify in writing that:

(i) The borrower meets eligibility requirements including a statement that he (the lender) is unable to extend the additional credit without a guarantee,

(ii) The outstanding balance is current,

(iii) Collateral for the new advance(s) will be sufficient to meet EL security requirements,

(iv) The borrower has reasonable repayment ability for the overall guaranteed indebtedness, and

(v) The advance(s) will be within the terms of the existing "line of credit ceiling" previously approved by FmHA.

(2) For cases meeting the criteria stated in paragraphs (h)(1) (i), (ii), (iii), (iv), and (v) of this section the County Supervisor will change the date "December 31, 1976," in the second line of item "a" of the existing contract of guarantee to "September 30, 1978," and initial the change. If the County Supervisor questions the proposal and needs supporting information in addition to that previously furnished by the lender, he will obtain it before initialing the change in the contract guarantee.

(3) When a lender desires to make advance(s) above the previously approved line of credit ceiling, or when the advance(s) will not be within the limits of the "Line of Credit Agreement," or the line of credit loan advances are not paid current, the above method will not be used. In such cases it will be necessary for the lender to prepare a completely new guarantee request with all the supporting forms and information required by this Part 1845 for a contract of guarantee on a new line of credit. If the loan approval official determines that all the requirements for a new guarantee are met, the existing line of credit will be

refinanced by the new line of credit, and a new contract of guarantee will be issued. To complete the transaction, the lender must surrender the previous contract of guarantee to the County Supervisor, who will mail it to the Finance Office with a new Form FmHA 449-31. The County Supervisor will indicate in his transmittal letter to the Finance Office that the previous contract is being replaced and that the Finance Office records should be adjusted to reflect only the new line of credit guarantee.

(Sec. 10, Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

[40 FR 30623, July 22, 1975, as amended at 41 FR 55321, Dec. 20, 1976; 42 FR 2308, Jan. 11, 1977; 43 FR 48619, Oct. 19, 1978]

§ 1845.14 EL loan rates, terms, and security.

(a) *Interest rate to borrower.* The interest rate to be paid by the borrower to the lender will be any legal rate agreed upon between the lender and the borrower. It may be a variable or fixed rate.

(b) *Loan terms.* Each loan (or advance under an approved line of credit) will be scheduled for repayment over a period not to exceed 7 years from the date of the Contract of Guarantee or such shorter period as may be necessary to assure that the loan will be adequately secured. The borrower's needs, repayment ability and type of security he has to offer will be taken into consideration when scheduling loans for repayment. Generally, amounts advanced for annual recurring operating expenses should be scheduled for repayment from that year's income.

(c) *Renewal authority.* When a lender determines that a renewal will assist in orderly collection of EL loan advances which have reached the full 7 year maturity date, it may renew notes covering such loan advances but not for more than 3 additional years, *Provided,* The lender and FmHA agree that: (1) The borrower meets the eligibility and security requirements for an initial loan as contained in §§ 1845.10 and 1845.14, and (2) the renewal will not be used in lieu of liquidation. Such renewal may not exceed 10 years from the date of the Contract of Guarantee. This will be accomplished by obtaining a replacement note setting forth the new repayment schedule. Any renewal must be approved in writing by FmHA.

(d) *Security.* The security must be adequate, in the opinion of the lender and FmHA to assure repayment of each EL loan advance. If the lender and FmHA agree, the applicant's repayment ability may be considered for replacement of depreciated security value if such depreciation is due to temporarily economic conditions only when the borrower's first full year's operating plans clearly show ability to pay the full line of credit authorized and the applicant will give a lien on all the security he owns. Any extension of credit made by the lender on or after October 1, 1978, must be secured by a lien junior to the security for the guaranteed EL advances or by a lien on other collateral.

[40 FR 30623, July 22, 1975, as amended at 41 FR 55321, Dec. 20, 1976]

§ 1845.15 Special provisions regarding security.

The lender is responsible for seeing that proper and adequate security is obtained and maintained in existence and of record to protect the interests of the lender and FmHA. The entire loan advance shall be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of advances made. The unguaranteed portion of a loan advance shall not be paid first nor given any preference or priority over the unguaranteed portion of such an advance.

(a) *Third party liens (laborers, mechanics, etc.).* Among other things in obtaining the required security, the lender is responsible for ascertaining that there are no claims of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment or other lienholders or lien claimants against the security property or the borrower.

(b) *All collateral must secure entire loan.* All collateral of any nature securing a line of credit guaranteed by

FmHA must secure the entire loan unless that is legally impossible as in some Texas homestead cases. The lender cannot take separate collateral to secure only that portion of a line of credit not covered by the FmHA guarantee, unless the security for the guaranteed line of credit is real estate and it is clearly adequate. The lender shall not require compensating balances or certificates of deposit.

§ 1845.16 Promissory notes, security instruments, and financing statements.

(a) *Promissory notes, mortgages, and security agreements.* The lender may use its forms of promissory notes, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages in Louisiana and Puerto Rico), provided such forms do not contain any provisions that are in conflict or are inconsistent with the provisions of this regulation or if they do contain any such conflicting or inconsistent provisions, such provisions will not be relied on or enforced by the lender in any way or to any extent while the Contract of Guarantee is in effect.

(b) *Financing statements.* Commercial financing statement forms that comply with State laws and regulations may be used. They must be adapted to meet FmHA requirements by inserting provisions:

(1) Covering the "proceeds and products" of the collateral described, and

(2) That "disposition of the collateral is not authorized hereby."

§ 1845.17 Loan fee and charges.

(a)-(b) [Reserved]

(c) *Late payment charges.* Such charges may be made only if: They are being made by the lender on the same basis against all other borrowers obtaining loans for similar purposes and periods of time in the borrower's area with or without an FmHA Contract of Guarantee. However, late payment charges are not covered by the Guarantee.

[40 FR 30623, July 22, 1975, as amended at 42 FR 51606, Sept. 29, 1977]

§§ 1845.18—1845.26 [Reserved]

§ 1845.27 Equal opportunity and nondiscrimination.

The following equal opportunity and nondiscrimination forms and requirements are applicable to certain cases *involving construction* as indicated. The lender is responsible for seeing that the requirements of paragraphs (b) through (f) of this section are met. (For more detailed information see *7 CFR Part 15, and 41 CFR Part 60.*)

(a) *Compliance reports.* No prospective contractor or subcontractor will be eligible for a contract or subcontract financed with a guaranteed loan until he has filed all of the compliance reports required of him under any previous contracts.

(b) *Equal Opportunity Agreement.* Before loan closing, each applicant whose loan involves a construction contract of more than $10,000 must execute Form FmHA 440-1, "Equal Opportunity Agreement."

(c) *Contract or subcontract in excess of $10,000.* If the contract or a subcontract exceeds $10,000:

(1) The contractor or subcontractor must submit Form FmHA 400-6, "Compliance Statement," before or as a part of the bid or negotiation.

(2) An Equal Opportunity Clause must be part of each contract and subcontract. This clause is incorporated in Form FmHA 424-6, "Construction Contract," which may serve as a guide.

(3) With notification of the contract award, the contractor must receive:

(i) Form FmHA 400-3, "Notice to Contractors and Applicants," signed by the lender, with an attached Equal Employment Opportunity Poster. Posters in Spanish must be provided and displayed where a significant portion of the population is Spanish speaking.

(ii) Form AD-425, "Contractor's Affirmative Action Plan for Equal Employment Opportunity Under Executive Order 11246 and Executive Order 11375," if the contractor or subcontractor is subject to the requirements of paragraph (e) of this section.

(d) *100 or more employees and contract or subcontract exceeds $10,000.* If the contractor or subcontractor has

100 or more employees and the contractor subcontract is for $10,000 or more:

(1) In addition to meeting the requirements of paragraph (c) of this section, each such contractor or subcontractor must file Standard Form 100, "Employer Information Report EEO-1" with the Joint Reporting Committee within 30 days of the contract or subcontract award unless this report has already been submitted within the last 12 months.

(2) An annual report must be filed on or before March 31 as long as the contractor or subcontractor holds a contract equal to $10,000 or more which is financed with a guaranteed loan. Failure to file timely, complete, and accurate reports constitutes noncompliance with the Equal Opportunity Clause. Report forms are distributed by the Joint Reporting Committee and any questions on this form should be addressed by the contractor or subcontractor to the Joint Reporting Committee, 1800 G Street, NW, Washington, D.C. 20006.

(e) *50 or more employees or contract or subcontract exceeds $50,000.* If the contract or subcontract is $50,000 or more or the contractor or subcontractor has 50 or more employees, in addition to the requirements of paragraph (c) of this section, each such contractor or subcontractor must be informed that he must develop a written affirmative action compliance program for each of his establishments and put it on file in each of his personnel offices within 120 days of the commencement of the contract or subcontract. Form AD-425 provides guidelines for the contractor or subcontractor in developing such a program.

(f) *Compliance reviews.* Compliance reviews must be made during construction inspections to determine whether the required posters are displayed, the facilities are not segregated, and there is no evidence of discrimination in employment. Findings of the borrower or lender, whichever has the responsibility in the particular type of loan case, will be shown on Form FmHA 424-12, "Inspection Report," which will be signed by the lender. If there is any evidence of noncompliance, such borrower or lender will try to achieve voluntary compliance. If the effort fails, such borrower or lender will report all the facts to FmHA.

(g) *Employee complaints.* Any employee of, or applicant for, employment with such contractors or subcontractors may file a written complaint of discrimination with FmHA.

(1) A written complaint of alleged discrimination must be signed by the complainant and should include the following information.

(i) The name and address (including telephone number, if any) of the complainant.

(ii) The name and address of the person committing the alleged discrimination.

(iii) A description of the acts considered to be discriminatory.

(iv) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(2) Such complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by FmHA for good cause shown.

§ 1845.28 Appeal procedure.

(a) *Decisions of State Directors.* If a State Director rejects any party's request for approval as a lender, for approval to serve any area, terminates the previously approved status of any lender, rejects a request from an approved lender for issuance of a Contract of Guarantee, or determines that a previously issued Contract of Guarantee is void or voidable or unenforceable, in a particular case, such lender or holder may request the Administrator of FmHA to review the State Director's decision. His address is: Administrator, Farmers Home Administration, United States Department of Agriculture, Washington, D.C. 20250.

(1) The request for review must be in writing and must be accompanied by supporting information and documentation. A copy of the request and supporting material must be sent by the requesting party to the State Director at the same time such party forwards the original to the Administrator.

(2) Upon receipt of the copy of this material, the State Director will fur-

nish a full report on the matter to the Administrator.

(3) The Administrator will act on the request as expeditiously as possible under all the circumstances, and will notify the requestor and the State Director in writing of his decision and the reason therefor. The Administrator's decision is final.

(b) *Decisions of County Supervisors.* If a County Supervisor rejects a request from an approved lender for issuance of a Contract of Guarantee, or determines that a previously issued Contract of Guarantee is void, voidable, or unenforceable in a particular case, such lender may request the State Director to review the County Supervisor's decision.

(1) The matter will be handled in the same manner as in paragraph (a) of this section, except that the County Supervisor and the State Director, rather than the State Director and Administrator, will be involved.

(2) If the requesting party is not satisfied with the State Director's decision, such party may follow the procedure in paragraph (a) of this section in obtaining the Administrator's review of the State Director's decision.

§ 1845.29 Records and reports of lenders.

(a) *Access to records.* Lenders will permit representatives of FmHA (or of other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of their records pertaining to EL guaranteed loans. Such inspections and copying will be made during regular office hours of lenders.

(b) *Reports to FmHA.* The lender will be responsible for providing the County Supervisor with a statement certified by an officer of the lender of the unpaid principal balance owed on guaranteed EL loan advances semiannually as of June 30 and December 31. In addition, the lender is responsible for analyzing financial statements obtained periodically from the borrower, taking any servicing actions needed, and providing copies of the statements and record of actions to the County Supervisor.

[40 FR 30623, July 22, 1975, as amended at 42 FR 51606, Sept. 29, 1977]

§§ 1845.30—1845.31 [Reserved]

§ 1845.32 Loan servicing.

The lender shall be responsible for servicing all the loan advances and shall remain mortgagee and/or secured party of record. In addition to the items covered in § 1845.3(k), the term "servicing" also includes transfer and assumption and liquidation. The specific servicing functions involved in transfers and assumptions and liquidations are set forth under those headings in this regulation. The lender's significant general servicing functions are:

(a) *Collections of indebtedness.* Indebtedness is collected as it falls due from the borrower, third party converters, or other parties liable, or through transfer and assumption or liquidation action.

(b) *Hazard insurance.* Adequate hazard insurance, as available and needed for the type of property and operation involved, is obtained and kept effective on the insurable security property, with loss payable clause in favor of the holder as mortgagee or secured party.

(c) *Taxes.* Taxes and any assessments or ground rents against or affecting the security property are paid.

(d) *Litigation.* The loan and security are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigative or third party actions.

(e) *Loss payments and compensation awards.* Any insurance loss payments, condemnation awards, or similar proceeds are applied on the guaranteed loan in accordance with lien priorities on which the guarantee was based; or to rebuilding or otherwise acquiring needed replacement security property of at least equal security value.

(f) *Sale of security property and disposition of proceeds.* The sale or other disposition of security property is not approved unless the guaranteed loan is paid in full or all proceeds are applied in accordance with the lien priorities on which the guarantee was based, except that:

(1) Proceeds from the disposition of *basic* security may be used to acquire property of similar nature, equal

value, and equal lien priority when the lender determines that such use is necessary for the success of the enterprise. Basic security means all real property, fixtures, foundation herds, machinery, and equipment serving as security for the guaranteed loan.

(2) Proceeds from the disposition of any *non-basic* (normal income) security property planned to be marketed in the regular course of business in going concern cases may be used for purposes which the lender determines are necessary and proper in connection with the type of operation involved including family living expenses.

(g) *Protective advances.* No advances for protection or preservation of the security or security property shall be made without FmHA's written approval, when such advances will exceed the line of credit ceiling. Approved protective advances will be covered by the Contract of Guarantee.

(1) *Security.* Any advances must constitute an indebtedness of the borrower to the lender that is secured by the guaranteed loan security instruments.

(2) *Settlement claim.* Any advances made by the lender to remedy a failure on its part to properly discharge its responsibilities under this regulation will not be included in the protective advances in calculating a claim in liquidation of accounts. This includes, but is not limited to, the failure to obtain or maintain lien priority, obtain adequate security, provide insurance coverage of property, evidence of indebtedness, or record notice required or agreed to by FmHA under or pursuant to the provisions of this regulation. However, other authorized protective advances, with unpaid interest thereon, will be included as guaranteed loan items in the "Report of Loss" in calculating a claim in liquidation of accounts.

(h) *Personal liability.* The borrower (any party liable) is not released from personal liability for all or any part of the guaranteed loan except in transfer and assumption cases in which the full amount of the indebtedness is assumed.

(i) *Compliance with laws and ordinances.* Compliance is made with all laws and ordinances applicable to the security property or to the lender.

(j) *Loan servicing.* The County Supervisor may make periodic investigations as he considers necessary to determine whether any security property that was to be acquired or constructed after issuance of the Contract of Guarantee has been acquired or constructed, and whether the guaranteed line of credit is being properly serviced. If a problem develops, the County Supervisor will promptly get together with the party servicing the loan account in trying to get it resolved satisfactorily.

(k) *Change from livestock operation to farming operation.* When a borrower ceases to carry on a livestock operation, but will continue farming he is not eligible to receive any more loan advances under the Contract of Guarantee. In such case the lender may continue with the loan(s) and reamortize it within the original term provided FmHA and the lender determine and agree that:

(1) There is a reasonable chance for the guaranteed loan advance(s) to be paid in full.

(2) The remaining collateral plus any to be obtained will be sufficient to meet EL security requirements.

(3) Proceeds from livestock sales properly have been paid on the guaranteed loan advance(s) or released for authorized EL purposes.

[40 FR 30623, July 22, 1975, as amended at 41 FR 55173, Dec. 17, 1976]

§ 1845.33 Liquidation of a claim under a Contract of Guarantee.

The lender will confer with FmHA regarding any planned liquidation action prior to liquidation of the security property. When it is determined by the lender or FmHA that action other than transfer of the guaranteed EL account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, or the borrower is no longer a farmer or rancher, it will notify the other party in writing and the matter will be handled as follows:

(a) *Settlement of claims under terms of the guarantee.* The FmHA and the lender will each appraise (or arrange for appraisals) and endeavor to agree on the market value of the security property. When a lender and FmHA cannot agree on the market value of the security, the lender will be required to liquidate the security at his own cost and the claim will be based on the value of the security as determined at the sale provided the sale is conducted in a commercially reasonable manner. When the value of the security and the amount of the debt owed by the borrower have been agreed to by the lender and FmHA, the FmHA will pay the lender not more than 90 percent of the *difference between* the total amount of principal and interest owed on any EL loan advances made under the approved line of credit *and* the market value of security less the amount owed on any prior liens.

(b) *Report of loss.* The lender will complete Form FmHA 449-20, except that items VII C, IX, and X B and E are inapplicable and will be left blank. The lender will send the form as completed to the County Supervisor. Final loss payments will be made only after a review has been made to accurately determine FmHA liability. County Supervisors will conduct such reviews and may tentatively approve the Report of Loss when it appears the loss does not exceed $35,000. District Directors will conduct the review and may give their tentative approval when it appears the loss does not exceed $100,000. (In both cases, the Report of Loss will be forwarded to the State Director who, after his review, will give the Report of Loss final approval or return it with his comments to the District Director or County Supervisor for their reconsideration.) State Directors will conduct the review when it appears the loss exceeds $100,000 and may give final approval in all cases. If the State Director wishes National Office assistance in the conduct of the review, he may request it. The State Director will submit to the Finance Office for payment any losses claimed on an appoved Form FmHA 449-20. The Finance Office will forward loss payment checks within 10 days of receipt of the claim to the County Supervisor for delivery to the lender.

(c) *Surrender of contract.* Upon payment of the appropriate amount to the lender the contract will terminate automatically. The lender will surrender the contract to the FmHA Finance Office for cancellation and notify the FmHA County Supervisor of this action.

[40 FR 30623, July 22, 1975, as amended at 41 FR 55173, Dec. 17, 1976; 42 FR 51606, Sept. 29, 1977]

§ 1845.34 Transfer and assumption of EL loan advances—general.

The transfer of security property by the borrower and assumption of guaranteed loan indebtedness by the transferee will be handled as provided for in this § 1845.34 and §§ 1845.35 and 1845.36. In transfer and assumption cases, preference will be given to applicants who, after the transfer and assumption are made, will meet the eligibility requirements for the FmHA guaranteed EL loan(s). If any cash down payment in connection with the transfer and assumption is to be applied on the loan, or if any security property is to be sold before the transfer and assumption, the amount of such cash down payment or sale proceeds should be credited on the transferor's guaranteed loan debt before the transfer and assumption transaction is closed. A County Committee certification will not be required. The transferee's Social Security or IRS Tax number, whichever is appropriate, should be used as the FmHA case number (see § 1845.7). The original borrower may be released from personal liability when the entire indebtedness is being assumed. The words "transfer and assumption," and "promissory note" shall be construed to mean "assumption agreement," and "borrower" shall be construed to mean "transferee."

§ 1845.35 Eligible transferee—full assumption.

An "eligible transferee" is one that after the assumption meets the eligibility requirements specified in § 1845.10. No applicant shall be deemed "eligible" after September 30, 1978, and any transfers and assumptions must be made on an "ineligible" basis under § 1845.36 after that date.

(a) *Assumption agreement.* The assumption of the entire debt will be made on the lender's form(s) of assumption agreement. However, the assumption agreement must contain the FmHA case numbers of the transferor and the transferee.

(b) *Changes in promissory note or security instrument provisions.* If the assumption arrangement changes the repayment schedule, interest rate, or other provisions of the promissory note or security instruments, the changes must be approved in writing by FmHA for the contract to be continued with the transferee. The changes must also be approved in writing by the present debtors if they are not to be released from personal liability. Any new repayment schedule needed to meet the repayment ability of the eligible transferee may cover a period not to exceed *7 years* from the date of the assumption agreement. The lender's request for a transfer will be accompanied by:

(1) An explanation of the reasons for the proposed change in the provisions of the promissory note or security instruments.

(2) A statement that the lender's determinations required by paragraph (d) of this section can be made.

(c) *Concurrence of FmHA.* If FmHA concurs in the proposed changes in the promissory note or security instrument provisions, it will so advise the lender in writing and the lender may proceed with the transfer and assumption.

(d) *Determinations by lender.* Before the transfer and assumption can be approved, the lender must determine that all of the following conditions exist or can be met:

(1) The transferee is eligible for the type of loan involved.

(2) The transferee will acquire all of the property securing the guarantee loan balance unless (i) the transferee has substitute security of equal or greater value to secure the loan or (ii) the market value of the transferee's security is more than the debt owed and he is retaining a portion of the excess security as his equity payment and the security transaction is agreed to in writing by the lender and FmHA.

(3) The transferee cannot acquire the security property without a guarantee.

(4) The market value of the security property being acquired by the transferee plus any additional security the transferee proposes to give to secure the debt must be at least equal to the amount of the indebtedness being assumed plus the value of any liens against the property.

(5) The priorities of the existing lien or liens securing the guaranteed loans will be maintained or improved.

(6) The transferee has the necessary repayment ability.

(7) Proper hazard insurance will be continued in effect.

(8) Any applicable Truth in Lending requirements will be met.

(9) The transaction can be properly closed and the conveyance instruments will be filed, registered or recorded, as appropriate and legally permissable.

(e) *Closing transfer and assumption.* As soon as the lender finds that it will be able to make the determinations required in paragraph (d) of this section and has received FmHA's approval of any changes in the provisions of the promissory note or security instruments, the lender may proceed with closing the transfer and assumption transaction. The closing will include, but will not be limited to, obtaining execution and delivery of the conveyance instruments and the assumption agreement, compliance with any Truth in Lending requirements, and the filing, registration, or recordation of said conveyance instruments, as appropriate and legally permissible.

(f) *Contract of Guarantee.* The existing Contract of Guarantee will continue in effect, so a new Contract of Guarantee will not be issued. However, as soon as the transfer and assumption have been completed, the lender will so indicate on the original Contract of Guarantee by inserting the name of the assuming party on the Contract of Guarantee. When FmHA receives its copy of the assumption agreement, FmHA will make the same insertions on its copy of the Contract of Guarantee and make any appropriate notations in its records.

(g) *Material furnished by lender to FmHA after closing.* Immediately after the transfer and assumption have been closed, the lender will furnish to FmHA:

(1) One conformed copy of the executed assumption agreement.

(2) A statement showing:

(i) What changes, if any, have been made in the provisions of the promissory note or security instruments.

(ii) That all of the conditions and requirements of paragraph (d) of this section have been met.

(iii) That insertions have been made on the original Contract of Guarantee as required by paragraph (f) of this section.

(iv) Whether the present debtors have been released from personal liability or have signed an agreement of continued personal liability.

(h) *Conformed copies—sent and checked by FmHA.* When FmHA receives its copy of the executed assumption agreement and the original statement from the holder as required in paragraph (g) of this section, it will examine them to see whether they are proper in all respects. If FmHA finds any errors or omissions in the conformed copies, it will return the defective material to the holder so that the errors or omissions may be corrected. If the original assumption agreement contains the same defects, it will first have to be corrected and the corrections initialed by the assuming parties and the lender, and also by the present debtors if they will remain personally liable.

[40 FR 30623, July 22, 1975, as amended at 41 FR 55321, Dec. 20, 1976]

§ 1845.36 Ineligible transferee—full assumption.

An "ineligible transferee" is one that does not meet the eligibility requirements specified in § 1845.10.

(a) *Assumption agreement.* The assumption of the entire EL debt will be made on the lender's form(s) of assumption agreement.

(b) *Continued liability of present debtors.* If the promissory note repayment schedule and/or interest rate are changed in the assumption agreement, the present debtors will be required to sign the agreement of continued liability on the bottom of the assumption agreement if their continued personal liability is required.

(c) *Interest rate and term of assumption.* The interest rate may be any legal rate agreed to by the lender and the assuming parties. The term of the assumption will be in accordance with the repayment ability of the applicant but it will not exceed *5 years* from the date of the assumption agreement.

(d) *Determinations by lender.* Before the transfer and assumption are consummated, the lender must obtain FmHA's approval in writing of the transaction. As a basis for obtaining that approval, the lender must furnish to FmHA a completed but unexecuted copy of the assumption agreement and a statement showing that the following determinations have been made:

(1) That the transferee is *not* eligible for the FmHA guaranteed EL loan.

(2) That the proposed transfer and assumption appear to be the best method for adequately protecting the financial interests of the lender and the FmHA.

(3) That the market value of the security property to be transferred plus any additional security the transferee proposes to give to secure the debt must be at least equal to the unpaid balance on the guaranteed loan(s) plus any prior liens, or that the financial situation of the transferee is such that any difference could be collected at the time of closing the transfer.

(4) That the conditions and requirements of § 1845.35(d) (2), (3), (4), (5), (6), (7), (8), and (9) can be met.

(5) That the proposed term of the assumption is necessary and meets the requirements of paragraph (c) of this section.

(6) Whether the present debtors will sign an agreement of continued liability or will be released from personal liability (see paragraph (b) of this section).

(e) *Approval by FmHA.* If FmHA concurs in the lender's determinations and agrees that the transfer and assumption should be made as proposed, it will send a letter of approval to the lender. If FmHA determines that it cannot approve the proposed transaction, it will inform the lender in writing of the reasons. If the lender satisfies FmHA's objections, it may resubmit the matter for reconsideration.

(f) *Contract of Guarantee.* The existing Contract of Guarantee will continue in effect, so a new Contract of Guarantee will not be issued. The same insertions will be made on the original and copies of the Contract of Guarantee as provided in § 1845.35([illegible]).

(g) *Closing transfer and assumptions.* Upon receipt of FmHA's approval letter, the lender may proceed with closing the transfer and assumption transaction. The closing will include, but will not be limited to, obtaining execution and delivery of the conveyance instruments and the assumption agreement, compliance with any Truth in Lending requirements, and filing, registration, or recordation of said conveyance instruments, as appropriate and legally permissible.

(h) *Material furnished by lender to FmHA after closing.* Immediately after the transfer and assumption have been closed, the holder will furnish to FmHA:

(1) One conformed copy of the executed assumption agreement.

(2) A statement showing:

(i) That all of the conditions and requirements of paragraph (d) of this section have been met in accordance with the approval letter issued by FmHA under paragraph (e) of this section.

(ii) That the insertions have been made on the original Contract of Guarantee as required in paragraph (f) of this section.

(iii) Whether the present debtors have been released from personal liability or have signed the agreement of continued liability on the bottom of the assumption agreement. See paragraph (b) of this section.

(i) *Conformed copies—sent to and checked by FmHA.* The procedure set forth in § 1845.35(h) will be followed in examining the handling the material required by this section.

§ 1845.37 Termination of Contract of Guarantee.

The Contract of Guarantee will terminate automatically:

(a) Upon written notice from the lender to the Finance Office that the contract will terminate.

(b) Not later than six months after the final due date of the last loan advance covered by the contract, unless renewed with FmHA consent.

(c) Upon full payment of any claim made under terms of the Contract of Guarantee. The Contract of Guarantee upon termination will be forwarded to the FmHA Finance Office.

§ 1845.38 [Reserved]

§ 1845.39 Responsibilities of FmHA officials.

County Supervisors are responsible for handling all FmHA functions with respect to EL line of credit guarantees, except those delegated to other FmHA positions.

(a) The State Director has authority to approve EL line of credit guarantees up to the $350,000 limit. He will do so by signing Form FmHA 449-27.

(b)-(c) [Reserved]

(d) The County Supervisor is responsible for protecting FmHA's interests and discharging its obligations as guarantor after the Contract or Guarantee is executed. The County Supervisor and District Director are jointly responsible for appraisals to determine the market value of security property needed in connection with guarantee claim reports. The District Director may request the assistance of State Office personnel in making such an appraisal on an individual case basis.

[40 FR 30623, July 22, 1975, as amended at 42 FR 51606, Sept. 29, 1977]

§ 1845.40 [Reserved]

§ 1845.41 County Office file.

Since the lender has responsibility for making and servicing EL guarantees, the County Office is not expected to maintain complete case files on them. However, the County Office file on each case should contain material such as originals or copies of forms and other material issued or received by the County Office in connection with the case.

SUBCHAPTER E—ACCOUNT SERVICING

PART 1863—REAL ESTATE TAX SERVICING

Sec.
1863.1 General.
1863.2 Definition of tax.
1863.3 Servicing taxes.
1863.4 Servicing delinquent taxes.

AUTHORITY: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70, unless otherwise noted.

SOURCE: 36 FR 17833, Sept. 4, 1971, unless otherwise noted.

§ 1863.1 General.

This Part applies to borrowers with a Farm Ownership (FO), Operating Loan (OL), Soil and Water (SW), Recreation Loan (RL), Emergency (EM), Economic Opportunity (EO), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Labor Housing (LH), and Other Real Estate (ORE) loans secured by real estate. It also applies to section 502 and section 504 Rural Housing borrowers [Single Family Housing (SFH)] who also have a Farmer Program loan. *It does not apply to borrowers who have a SFH loan only;* those will be serviced under § 1965.105 of Subpart C of Part 1965 of this chapter. Borrowers are responsible for paying taxes on the real estate security to the proper taxing authorities before the taxes become delinquent. This obligation is set forth in the security instrument securing the loan.

[50 FR 39638, Sept. 30, 1985]

§ 1863.2 Definition of tax.

For the purpose of this part, the word "tax" means all taxes, assessments, levies, irrigation and water charges, or other similar obligations which are, or will on nonpayment become, a lien upon the real estate prior to the mortgage securing the Farmers Home Administration (FmHA) loan.

§ 1863.3 Servicing taxes.

(a) The County Supervisor will be responsible for ascertaining that all mortgaged real estate is listed properly for tax purposes.

(b) The County Supervisor is responsible for taking all actions in connection with taxes as may be necessary to protect the Government's security interests. Any unusual situations that may arise with respect to tax servicing should be referred to the State Office for consideration.

(c) The County Supervisor will encourage each borrower to pay taxes promptly in order to avoid any penalties. Normally, this can be accomplished through routine servicing of loans by emphasizing the advantages of setting aside sufficient income to meet tax obligations when they become due. Taxes will be adequately budgeted for those borrowers with whom Form FmHA 431-2, "Farm and Home Plan," is developed. Each borrower will be encouraged to notify the County Supervisor when he has paid his taxes.

§ 1863.4 Servicing delinquent taxes.

The County Supervisor will contact each borrower with a delinquent tax and make every practicable effort to have him pay the tax with his own funds. If the delinquent tax is not paid and the borrower comes to the office with proceeds for application on the FmHA account secured by the real estate, the County Office personnel will endeavor to get the borrower to use the proceeds to pay the delinquent tax. If the amount of the proposed payment is greater than the amount of the delinquent tax, the difference will be applied on the FmHA account in accordance with the policy outlined in Subpart A and Subpart G of Part 1951 of this chapter. When a borrower owes delinquent taxes and the proceeds offered for payment are less than the amount of the delinquent tax, such proceeds will be applied on the FmHA accounts in the usual manner. In any situation in which unpaid taxes remain delinquent for a period of 2 years, a report indicating the reasons for the situation will be forwarded to the State Office for review and instruction for future servicing of the borrower's account.

(a) Prior (usually about 90 days) to the time it is legally possible for action to be taken that will cause the borrower to lose title or right of possession of the security property, or the use of essential water, the County Supervisor will contact the borrower and definitely determine if he will pay the delinquent tax immediately. If the borrower is unable or unwilling to pay the delinquent tax with his own funds after every appropriate effort has been made to have him do so, the County Supervisor will prepare and process Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," to cover the amount of the delinquent taxes plus the amount of any accrued penalty.

(1) If the Government is holding a mortgage other than a first mortgage on the property, Standard Form 1034 will not be prepared until the County Supervisor has determined that the prior lien holder will not pay the delinquent tax; the Government's security will be jeopardized if the delinquent tax is not paid; and, the value of the security is sufficient to justify the advance.

(2) A report will be attached to Standard Form 1034 which will outline the reasons for paying the taxes by voucher and recommend future servicing of the case.

(3) The voucher will be prepared in an original (Standard Form 1034) and two copies (Standard Form 1034a). The name and address of the taxing body to which payment is due will be inserted in the heading. The notation inserted in the space for description of the service will include the source of funds from which payment will be made, the purpose of the payment, the location and a simple description of the property, the name and case number of the borrower, the period for which the tax was levied, and the fact that the amount will be charged to the borrower's account. A sample notation is as follows: "For payment of delinquent taxes on real property in Clay County, Ala., of 115 acres owned by Thomas Ball, 01-14-783, 518, for period January 1, 1965, to December 31, 1965, to be charged to borrower's ——— account." Insert in the blank space "direct FO," "direct SW," "RH," "ORE," "insured FO," or "insured SW," whichever is applicable. The amount of the delinquent tax plus the amount of any accrued penalty will be inserted in the appropriate spaces.

(b) The County Supervisor is authorized to sign 'Standard Form 1034 approving payment of delinquent taxes plus any accrued penalty. The original of the voucher, with attached report, will be sent to the State Office. Two copies of the voucher and report will be placed in the borrower's County Office case folder. One copy will be held in suspense and submitted to the taxing official with the Treasury Check.

(c) Upon receipt of the voucher and report in the State Office, the original of the voucher will be sent immediately to the Finance Office. The State Director will advise the County Supervisor with respect to future handling of the case.

(d) After the voucher has been processed in the Finance Office, the U.S. Treasury check will be issued to the taxing body and mailed to the County Supervisor for delivery. The purpose of the payment will be stated on each check. Any amount advanced for taxes will be entered as a recoverable cost charge on the borrower's account in the Finance Office. The advance will bear interest at the rate specified in the most recent note, secured by the lien on the property for the account to which the advance is charged. After the check is issued, Form FmHA 451-26, "Transaction Record," will be prepared by the Finance Office and sent to the County Office, showing the amount of the recoverable cost charge and the applicable rate of interest. The Treasury check together with the suspense copy of the voucher will be delivered to the taxing official by the County Supervisor.

(7 U.S.C. 1989; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[36 FR 17833, Sept. 4, 1971, as amended at 44 FR 46251, Aug. 7, 1979; 46 FR 60181, Dec. 9, 1981]

PART 1864—DEBT SETTLEMENT

Sec.

1864.1 Purpose and scope.
1864.2 General policies.
1864.3 Compromise and adjustments.
1864.4 Cancellation upon application.
1864.5 Cancellation of nonjudgment debts, regardless of the amount, of deceased, disappeared, and bankrupt debtors without applications.
1864.6 Chargeoff of judgment debts (regardless of the amount) without application.
1864.7 Chargeoff of nonjudgment debts.
1864.8 Compromise or cancellation of debts through the use of Form FmHA 456-1 when signature of the debtor cannot be obtained.
1864.9 Cancellation or chargeoff of debts through the use of Form FmHA 456-1 without personally contacting the debtor.
1864.10 Joint debtors.
1864.11 Cases in the hands of the OGC.
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1864.13 Regional Agricultural Credit Corporation (RACC) and SRRC judgments obtained in State courts by private attorneys.
1864.14 Approval of settlement and submission to National Office.
1864.15 Preparation and processing of Form FmHA 456-1.
1864.16 Preparation and processing of Form FmHA 456-2.
1864.17 Disposition of promissory notes.
1864.18 Delinquent adjustment agreements.
1864.19 Finance Office handling.

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

SOURCE: 36 FR 17833, Sept. 4, 1971, unless otherwise noted.

§ 1864.1 Purpose and scope.

This part sets forth the policies and procedures for settlement of debts owed the United States and administered by the Farmers Home Administration (FmHA) under any of its programs, including State Rural Rehabilitation Corporation (SRRC) accounts being administered under trust or liquidation agreements. (Information with respect to such agreements and any limitations on the settlement of such SRRC accounts is available in all FmHA offices.) This part does not cover releases from personal liability in transfer or voluntary conveyance cases.

§ 1864.2 General policies.

(a) *Definitions.* For the purpose of this part, the following definitions are applicable:

(1) "Compromise" is the satisfaction of a debt by the acceptance of a lump-sum payment of an amount less than the total amount owed on the debt on which settlement is requested.

(2) "Adjustment" is the reduction in a debt conditioned upon completion of payment of the adjusted amount at some specified future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement have been made.

(3) "Cancellation" is the final discharge of a debt without any payment thereon.

(4) "Chargeoff" is the writing off of a debt as an asset, without release of liability, including "termination of collection activity."

(5) "Farmer program loans" means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Economic Opportunity (EO), and Special Livestock (SL) loans, and/or Rural Housing loans for farm service buildings (RHF).

(6) "Settlement" is the compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA. The term "settlement" is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

(7) "U.S. Attorney" as used herein refers also to the Department of Justice.

(b) *Application of debt settlement policies.* All debtors are entitled to impartial treatment and uniform consideration under this part. Accordingly, FmHA personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations set forth in this part, and will not substitute therefor their individual feelings or sympathies in connection with any settlement.

(c) *Disposition of property.* Ordinarily, all security and nonsecurity property which was purchased or refinanced with loan funds will have been disposed of before processing a debt settlement action. Security and nonsecurity property which was purchased or refinanced with loan funds can be retained only under the conditions specified in § 1864.3(a)(2) or § 1864.5(a)(1) of this part.

(d) *Negotiating the settlement.* After all security has been disposed of or after the conditions of § 1864.3(a)(2) or § 1864.5(a)(1) of this part have been met, the County Supervisor should obtain from the borrower information concerning the borrower's financial condition. Enough information must be obtained so that either Form FHA 456-1, "Application for Settlement of Indebtedness," or Form FHA 456-2, "Cancellation or Charge-Off of FmHA Indebtedness," can be completed. All of these factors which are pertinent to determining ability to pay will be discussed with the borrower to arrive at the proper type and terms of a settlement. Present and future repayment ability, the factors mentioned in this part, and any other pertinent information will be the basis for determining whether the debt should be collected in full, compromised, adjusted, canceled, or charged off. It is impossible in cases eligible for debt settlement to accurately forecast the borrower's future repayment ability over a long period of time; consequently, the period of time during which payments on adjustment offers are to be made should not, except in unusual cases, exceed 3 years. If a borrower's income is derived from sources which do not appear to be stable, it may be preferable to consider a compromise offer in a lesser amount than an adjustment offer payable over a period of time. Likewise, it may be preferable to consider an adjustment offer in a smaller amount providing for larger payments over a shorter period of time, rather than an adjustment offer providing for a larger total payment over a longer period of time but with smaller payments. Borrowers may, however, make compromise or adjustment offers in any amount. All offers should be considered and processed, but an adjustment offer will not be approved unless there is reasonable assurance that the borrower will be able to make the payments as they become due. Since County Supervisors have no authority to approve debt settlement actions, they will make no statements to borrowers concerning the action that may be taken on their applications.

(e) *Proceeds from the sale of security and nonsecurity property.* Proceeds derived from the sale of security property, including crop security, and nonsecurity property purchased or refinanced with loan funds, will not be used in making a compromise or adjustment offer. Such proceeds are subject to application on the debtor's account, irrespective of an application for debt settlement. When a debtor has sold such property and wishes to use the proceeds therefrom as part or all of the offer, the County Supervisor will explain to him that such funds are to be credited on his debt. After such funds are received for credit to the debtor's account, he then may apply for settlement of his remaining indebtedness.

(f) *Review by County Committee.* All proposed settlement actions requiring the use of Form FmHA 456-1 will be reviewed by the County Committee, which will recommend approval or rejection, and no such settlement will be approved if it would be more favorable to the debtor than that recommended by the County Committee. Periodically, the County Supervisor will inform the County Committee of settlements approved through the use of Form FmHA 456-2, even though the County Committee will not take any action with respect to such settlements.

(g) *State Office review committee.* State Directors may appoint a review committee composed of three State Office staff members, if available, who are qualified by experience and training, to review and make recommendations on each proposed settlement.

(h) *Determination that debtor has acted in good faith.* (1) Before the application for settlement is approved, consideration will be given to determine whether the debtor has acted in good faith in an effort to pay his debts to FmHA. Some of the factors to consider in making this determination are:

(i) Whether the debtor has made any material misrepresentation or concealed any material facts in obtaining loans, including any indication of fraud.

(ii) Whether the debtor has used substantial amounts of loan funds for unauthorized purposes which were detrimental to his operations.

(iii) Whether the debtor has attempted through the transfer or sale of security property or other assets, or by other means, to defeat efforts to collect the debt.

(2) A determination that a debtor has not acted in good faith will be based on the conditions and reasons which caused the debtor to fail to pay his debt. Such a determination will be made only after careful and considerate study of the circumstances involved in each case. A finding that a debtor has not acted in good faith in an effort to meet his obligation to FmHA will be supported by a complete history and documentation on Form FmHA 456-1 of the acts committed. Such a finding must be clear cut as to conditions and reasons, and approval of the settlement upon application would not be justified unless or until the debtor has made appropriate financial compensation under the circumstances in the particular case. This will permit approval of compromise or adjustment of a claim where a borrower acted in bad faith, provided the offer is for more than a nominal amount; the offer represents a reasonable determination of his ability to pay; and, it is clearly in the best interest of FmHA to do so. When a borrower has made restitution by payment to FmHA of the value of any security property, or property purchased or refinanced with loan funds which was not accounted for property, the debt may be canceled upon application if the borrower has no ability to pay any amount.

(i) *Settlement when legal action has been recommended or is contemplated.* Debts will not be settled:

(1) If the debtor has committed any act(s) which might still subject him to criminal prosecution. This means that in such cases debts will not be settled until the 5-year criminal statute of limitations has expired, or the U.S. Attorney has declined criminal prosecution within that period, or

(2) If civil action to protect the interests of the Government is contemplated or pending, or

(3) If the case is in the hands of the U.S. Attorney and he has not closed his file or placed it in an inactive or suspense category.

(j) *Fraud and misrepresentation.* When there is an indication of fraud or misrepresentation in a case in which compromise, adjustment, or chargeoff is proposed under § 1864.3(b) or § 1864.7(a) or (b), and settlement appears appropriate, the facts will be documented on Forms FmHA 456-1 or 456-2. In such case, the completed form will be submitted to the Office of the General Counsel (OGC) with the recommendation that the case be referred to the U.S. Attorney for action on the proposed settlement and, if the U.S. Attorney has not previously considered the fraud or misrepresentation aspect of the case, for action in that regard. The case may be acted upon by the U.S. Attorney or may be returned for handling under this part. Conversion of security property or disposition of Economic Opportunity (EO) property without properly accounting for it does not constitute fraud as used in this part.

(k) *Obtaining advice from the OGC.* State Directors will obtain, when necessary, advice from the OGC in handling proposed debt settlement actions which involve legal problems. For example, this will be necessary in certain types of cases in which estate or guardianship proceedings are involved. Settlement of a claim against an estate under the provisions of this part will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, and dower and courtesy rights, and specific encumbrances on the property having priority over claims of the Government. (See Part 1962, Subpart A of this chapter.)

(l) *Settlement where debtor owes more than one type of FmHA loan.* It will not be the policy to settle any loan indebtedness of a debtor who is also indebted on another FmHA loan and who will continue as an active borrower, except in cases in which unusual circumstances exists such as where the borrower is unable to pay in full because his income is limited due to his age or because of a permanent health problem. In such cases, the facts will be fully documented in Part VII of Form FmHA 456-1.

(7 U.S.C. 1989; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO, 29 FR 14764, 33 FR 9850)

[36 FR 17833, Sept. 4, 1971, as amended at 37 FR 7311, Apr. 13, 1972; 42 FR 44696, Sept. 6, 1977; 44 FR 4437, Jan. 22, 1979; 50 FR 45750, Nov. 1, 1985]

§ 1864.3 Compromise and adjustments.

Nonjudgment debts owed to the FmHA may be compromised or adjusted upon application of the debtor(s), or if the debtor is unable to act for himself, upon application of his guardian, executor, administrator, or any other person directly interested in his estate, subject to the policies and procedures contained in this part.

(a) Debts, regardless of the amount, may be compromised or adjusted subject to the following:

(1) The debt or any extension thereof on which compromise or adjustment is requested is due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application.

(2) The debtor is unable to pay his indebtedness in full and has offered an amount equal to the present market value of the existing security for the debt, including any crop security; any existing nonsecurity property purchased, refinanced, or improved with FmHA loan funds in excess of minimum essential family living needs, and any additional amount which he is able to pay. The amount offered must represent a reasonable determination of the debtor's ability to pay. In such cases the debtor may retain the property. The debtor's income and expenses are critical factors in determining whether he is eligible for any settlement and, if so, the type of settlement and the amount which he can reasonably be expected to offer. In evaluating the debtor's ability to pay, it is essential that reliable information be obtained in sufficient detail to assure that the items are complete and accurate concerning the following:

(i) *Income available for compromise or adjustment.* (*a*) The debtor's total present income from all sources will be determined. In addition, careful consideration will be given to the probable sources, amount, and stability of income to be received over a reasonable period of years. Old age pensions, other public welfare assistance, and pensions received by veterans for pensionable disabilities, will not be considered as sources of funds with which to make compromise and adjustment offers.

(*b*) The amount of the debtor's operating and living expenses necessary to enable him to continue his operations will be determined.

(*c*) The amount of the debtor's debts and the priority of payments which must be made on such debts, from income, will be determined.

(ii) *Age and health of the debtor and his family.* When the debtor is dependent largely on income from an occupation in which his manual labor is required, age and health are vital factors in determining his ability to pay. However, when the debtor's income is from investments, business enterprises, or his management efforts, age and health are of less importance. The number in the debtor's family, and their ages and condition of their health, also will weigh heavily in determining his ability to pay.

(iii) *Debtor's assets, other than security property, and nonsecurity property purchased, improved, or refinanced with loan funds.* The value of such assets in relation to debts and liens of third parties, is important in determining the debtor's ability to pay. It is recognized that debtors must retain a reasonable equity in their essential nonsecurity property in order to continue their normal operations and meet family living expenses over a period of years. Under this policy there will not be considered as available for offer in settlement a reasonable equity in a modest nonsecurity homestead occupied by the debtor, whether or not exempt from levy and execution; and, nonsecurity property purchased, refinanced, or improved with FmHA loan funds which is essential for minimum family living needs.

(b) Debts of $20,000 or less, exclusive of interest, which cannot be compromised or adjusted under the provisions of paragraph (a) of this section may be compromised or adjusted in the following instances, even though the debtor may have the ability to pay in full, unless there is an indication of fraud or misrepresentation on the part of the debtor. (Where there is an indication of fraud or misrepresentation, see § 1864.2(j) for handling.)

(1) *Inability to collect.* Inability to collect is when the full amount cannot be collected because of the refusal of the debtor to pay the debt in full and the OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings.

(i) In determining inability to collect, the following factors will be considered:

(*a*) Availability of assets or income which may be realized upon by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law.

(*b*) Inheritance prospect within a reasonable time.

(*c*) Likelihood of debtors obtaining nonexempt income within a reasonable time out of which there could be collected a substantially larger sum than the amount of the present offer.

(ii) For this type of settlement an asterisk (*) will be inserted in Part V of Form FmHA 456-1 after "(D)" and before the word "I." In the blank space below Part V (E) of Form FmHA 456-1 the following will be inserted:

> *With knowledge of the penalties for false statements provided by 18 U.S.C. 1001 ($10,000 fine and/or 5 years imprisonment) and with knowledge that this financial statement is submitted by me (us) to affect action by the Department of Agriculture.

(2) *Litigative probabilities.* When the OGC has advised in writing that:

(i) There is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and

(ii) The amount offered represents a reasonable settlement considering:

(*a*) The probability of prevailing on the legal issues involved.

(*b*) The probability of proving facts to establish full or partial recovery, having due regard to the availability of witnesses and other pertinent factors.

(*c*) The probable amount of court costs which may be assessed against the Government if it is unsuccessful in litigation.

(3) *Costs of collecting debt.* When the cost of collecting the debt does not justify enforced collection of the full amount, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigative costs of collection. Such discount will not exceed $250 unless the OGC advises that in the particular case a larger discount is appropriate. Costs of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

[36 FR 17833, Sept. 4, 1971, as amended at 38 FR 1174, Jan. 10, 1973]

§ 1864.4 Cancellation upon application.

Nonjudgment debts regardless of the amount, owed to FmHA may be canceled upon application of the debtor, or if a debtor is unable to act for himself, upon the application of his guardian, executor, administrator, or any other person directly interested in his estate, subject to the policies and procedures contained in this part and the following:

(a) The FmHA employee having charge of the account furnishes a report and favorable recommendation concerning the cancellation.

(b) There is no known security for the debt or nonsecurity property purchased, refinanced, or improved with FmHA loan funds which is in excess of minimum living needs. The present market value of the security property which may be retained under the condition specified in this paragraph must not exceed $400.

(c) The debtor or any extension thereof, on which cancellation is requested, has been due and payable, or the debt has been accelerated by written notice, 5 years or more prior to the date of application.

(d) The debtor is unable to pay any part of his debt and has no reasonable prospect of being able to do so. The ability of the debtor to pay from income will be determined as specified in § 1864.3(a)(2).

§ 1864.5 Cancellation of nonjudgment debts, regardless of the amount, of deceased, disappeared, and bankrupt debtors without applications.

Debts due the FmHA may be canceled by use of Form FmHA 456-2 upon a report and the favorable recommendation of the employee having charge of the account in the following instances:

(a) *Deceased debtors.* The debtor is deceased and the following conditions exist:

(1) There is no known security for the debt, or nonsecurity property which was purchased, refinanced, or improved with FmHA loan funds, unless such nonsecurity property is to be retained as essential for minimum family living needs.

(2) If an administrator or executor has not been appointed to settle the debtor's estate, the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery.

(3) If an administrator or executor has been appointed to settle the estate of a debtor and a final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to; or a final settlement has not been made and confirmed by the probate court but there are no assets in the estate from which there is any reasonable prospect of recovery; or, regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been affected but such assets have been disposed of or lost in a manner which the OGC advises will preclude any reasonable prospect of recovery by the Government.

(b) *Disappeared debtors.* The debtor has been absent from his last known address for a period of at least 5 years, he has no known assets, his whereabouts cannot be ascertained without undue expense, and there is no existing security for the debt.

(1) Local representatives of other agencies of the U.S. Department of Agriculture in the area, who might reasonably be expected to have some knowledge of the debtor's present address, have been contacted and such agencies have not known of the debtor's whereabouts during the last 5 years preceding the date action is initiated to cancel the debt.

(2) Other reasonable efforts have been made to locate the debtor. These efforts will generally include contacts, either in person or by correspondence, with postmasters, motor vehicle licensing authorities, city directories, utility companies, any known relatives of the debtor, persons living in the community where the debtor resided who were acquainted with him, and members of the County Committee. Also, the debtor's loan file should be reviewed carefully for possible leads that may be of assistance in locating him. The efforts made to locate the debtor, including the names of persons contacted, the dates of contacts, and the information furnished by each, will be documented fully in the appropriate space on the debt settlement form. When the debtor's file shows no current attempt to locate him, a further effort will be made to locate him before action is initiated to cancel the debt. When the date of disappearance cannot be determined from the file, other reliable sources of information, such as personal interviews with people who were acquainted with the debtor may be used to establish that his whereabouts actually has been unknown for the last 5 years or more. Such information and its source will be shown on or attached to Form FmHA 456-2.

(c) *Cancellation of debts that have been discharged in bankruptcy.* Debts discharged in bankruptcy may be canceled by the use of Form FmHA 456-2. A copy of the referee in bankruptcy's order of discharge must be attached to

Form FmHA 456-1. The advice of OGC should not be requested unless the county office files contain evidence of a false loan application or a willful and malicious conversion of security property.

[36 FR 17833, Sept. 4, 1971, as amended at 37 FR 23628, Nov. 7, 1972]

§ 1864.6 Chargeoff of judgment debts (regardless of the amount) without application.

Judgments obtained by U.S. Attorneys may be charged off by use of Form FmHA 456-2 upon a report and favorable recommendation of the employee having charge of the account, provided:

(a) The debtor is deceased and all of the requirements of § 1864.5(a) have been met, or

(b) The debtor has been absent from his last known address for a period of at least 5 years and all of the requirements of § 1864.5(b) have been met, or

(c) The judgment debt has been discharged in bankruptcy and all of the requirements of § 1864.5(c) have been met, or

(d) The debt (as distinguished from the judgment) has been due and payable for 5 years or more and a period of 2 years has elapsed since any collections were made on the judgment. The judgment debtor (all debtors, if more than one) has no equity in property on which the judgment is a lien or on which it can presently be made a lien. The judgment is uncollectible in whole or in part.

§ 1864.7 Chargeoff of nonjudgment debts.

(a) Debts which cannot be settled under other provisions of this part may be charged off through the use of Form FmHA 456-1 without the debtor's signature in the following instances:

(1) Debts of $20,000 or less, exclusive of interest, may be charged off, even though they may not be due and payable and regardless of whether bad faith is involved, provided:

(i) The FmHA employee having charge of the account furnishes a report and favorable recommendation concerning the chargeoff.

(ii) The debtor is unable to pay any part of the debt and has no apparent future debt-payment ability determined as specified in § 1864.3(a)(2) (i), (ii), and (iii), however, inability to pay may be determined on the basis of information obtained from informed, reliable sources in cases where a borrower's address has been unknown for not more than 2 years; or, the debtor is able to pay part or all of the debt, but is unwilling to do so and it is clear that the Government cannot collect or enforce collection of any significant amount out of assets or income, having due regard for the exemptions available to the debtor under State and Federal law, and an opinion is received from the OGC to that effect. A copy of such opinion will be attached to the original of Form FmHA 456-1.

(iii) There is no known security for the debt or nonsecurity property purchased, refinanced, or improved with FmHA loan funds which is in excess of minimum living needs. The present market value of the security property which may be retained under the condition specified in this subdivision must not exceed $400.

(iv) There is no indication of fraud or misrepresentation. Where there is an indication of fraud or misrepresentation, the debt should be handled in accordance with the provisions of § 1864.2(j).

(2) Debts of more than $20,000, exclusive of interest, may be charged off when:

(i) Debtors have not acted in good faith as determined under the requirements in § 1864.2(h).

(ii) The FmHA employee having charge of the account furnishes a report and favorable recommendation concerning the chargeoff.

(iii) The debtor is unable to pay any part of the debt and has no apparent future debt payment ability determined as specified in § 1864.3(a)(2). In cases where the borrower's address has been unknown for more than 2 years, such determination may be made on the basis of information obtained from informed reliable sources.

(iv) There is no known security for the debt or nonsecurity property purchased, refinanced, or improved with FmHA loan funds which is in excess of minimum living needs. The present market value of the security property which may be retained under the condition specified in this subdivision must not exceed $400.

(v) The debt or any extension thereof has been due and payable for 5 years or more under the terms of the note or other instrument, or by acceleration by written notice.

(3) Documentation of information: Form FmHA 456-1 will reflect the sources from which the information documented thereon was obtained. At the top of page 1 of Form FmHA 456-1 in the space just below the form number, there will be inserted the notation "chargeoff."

(b) Debts of a principal balance of $20,000 or less may be charged off through the use of Form FmHA 456-2 in the following instances:

(1) *Costs will exceed recovery.* Debts with a principal balance of $400 or less may be charged off when efforts to collect the account have been unsuccessful and it is apparent that future collection efforts will be ineffectual or likely to prove uneconomical.

(2) *Claims legally without merit.* Debts may be charged off whenever the OGC advises in writing that the claim is legally without merit.

(3) *Claims cannot be substantiated.* Even though FmHA considers the claim to be valid, a debt may be charged off when efforts to induce voluntary payments are unsuccessful; there is no indication that collection can be made by setoff; the OGC advises in writing that evidence necessary to prove the claim in court cannot be produced; and, there is no indication of fraud or misrepresentation.

(4) *Fraud or misrepresentation.* Where there is an indication of fraud or misrepresentation the debt should be handled in accordance with provisions of § 1864.2(j).

(c) The debtor will not be informed of the action taken under the provisions of paragraphs (a) and (b) of this section.

[36 FR 17833, Sept. 4, 1971, as amended at 37 FR 7311, Apr. 13, 1972]

§ 1864.8 Compromise or cancellation of debts through the use of Form FmHA 456-1 when signature of the debtor cannot be obtained.

Debts of a living debtor may be compromised or canceled if it is impossible or impracticable to obtain his signed application and all other requirements of this part applicable to compromise or cancellation upon application have been met. Form FmHA 456-1 will be prepared and processed as prescribed in §§ 1864.15 and 1864.10 where joint debtors are involved, and also will reflect:

(a) The sources from which the information was obtained.

(b) That a current effort was made to obtain the debtor's application and the date of such effort.

(c) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor, and if the debtor refused to sign, the reason given by him.

§ 1864.9 Cancellation or chargeoff of debts through the use of Form FmHA 456-1 without personally contacting the debtor.

Debts of a debtor whose address or whereabouts is known may be canceled or charged off without personally contacting the debtor or parties residing in his neighborhood to obtain information about his financial circumstances provided:

(a) He lives in a recognized high crime area in which it would be extremely hazardous for an FmHA employee to visit and where it is unlikely that any inhabitant would have an income above the poverty level. A statement in regard to this matter must be documented on Form FmHA 456-1.

(b) The County Office file discloses that when he moved into the area described in paragraph (a) of this section, he had no assets out of which collection could be enforced and that, because of his lack of any special skills or ability, his prospects of earning more than enough to support a minimum subsistance are remote. The circumstances of the debtor at the time he moved into the area will be documented in part VII in lieu of completing part IV of Form FmHA 456-1.

(c) The debt will be:

(1) Canceled if the debtor acted in good faith and the conditions specified in § 1864.4(a), (b), or (c) are met, or

(2) Charged off in the conditions specified in § 1864.7(a)(1)(i), (iii), and (iv) or (2)(i), (ii), (iv), and (v), are met.

§ 1864.10 Joint debtors.

Settlements may not be approved as to one joint debtor unless approved as to all debtors. The term "joint debtors" includes all parties (individuals, corporations, estates, and so forth) who are legally liable for payment of the debt.

(a) Separate and individual adjustment offers from joint debtors should be accepted and processed only as a joint adjustment offer. Joint debtors should be advised, and part V of Form FmHA 456-1 should contain a statement that all debtors will remain liable for the balance of the debt until all payments due under the joint offer have been made.

(b) In those States in which the wife is not legally liable for payment of the debt even though she signed notes or other loan or security instruments with respect thereto, the State Director, with the advice of the OGC, will issue a State procedure outlining the basis for determining whether the wife is a debtor and, consequently, whether she will be required to make application for settlements.

(c) A separate application will be completed by each debtor, unless the debtors are members of the same family, such as husband and wife, or mother and son, and their situation is such that all necessary information can be shown clearly in a single application. In the latter cases, the application will contain the required financial information for each debtor and will be signed by each. When separate applications are required, they will be transmitted to the State Office together and considered as a unit.

(d) If one debtor applies for compromise, adjustment, or cancellation, or the debt as to him is to be charged off and the other debtor is deceased, or has received a discharge of the debt in bankruptcy, or his whereabouts is unknown, or it is impossible or impracticable to obtain his signature:

(1) Form FmHA 456-1 will be prepared by showing at the top of the form the name of the debtor requesting settlement, followed by the name of the other debtor, for example: "John Doe, joint debtor with Mary Doe, deceased"; "John Doe, joint debtor with Mary Doe, bankrupt"; "John Doe, joint debtor with Mary Doe, whereabouts unknown"; "John Doe, joint debtor with Mary Doe, impossible or impracticable to obtain signature"; as appropriate. In addition to the information concerning settlement of the debt as to the debtor making application, information also will be shown in part VII of Form FmHA 456-1 which justifies settlement of the debt as to the debtor(s) not joining in the application as required under appropriate sections of this part.

(i) Form FmHA 456-2 may be used if the total indebtedness is not in excess of $400 (principal) and the proposed action is a chargeoff. The names of the debtors will be shown at the top of the form in the same manner as prescribed in this paragraph (d)(1). Under "Facts Supporting Cancellation or Chargeoff," sufficient information will be shown to justify chargeoff of the debt against each debtor.

(2) If all debtors are either deceased or have received a discharge of a debt in bankruptcy or there whereabouts are unknown, or if a combination of these situations exists. Form FmHA 456-2 will be used and will be completed in the manner required in paragraph (d)(1) of this section.

(e) If one living debtor whose whereabouts is known has not acted in good faith and has no ability to pay, the debt will not be canceled as to the other debtor, but will be charged off, provided the conditions specified in § 1864.7(a) are met.

§ 1864.11 Cases in the hands of the OGC.

When a case is in the hands of the OGC, and the debtor makes an offer of settlement before the case has been referred to the U.S. Attorney, immediately upon receipt of such offer, the County Supervisor will notify the State Director, who will consult with the OGC and obtain its advice concerning the proposal and the further handling of the case.

§ 1864.12 Cases referred to the U.S. Attorney.

(a) *Claims and judgments on which U.S. Attorney's file has not been closed or placed in an inactive or suspense category.* When a claim is pending before, or a judgment has been obtained by the U.S. Attorney, and the debtor requests settlement of his indebtedness, the County Supervisor will explain to him that the U.S. Attorney has exclusive jurisdiction over the claim or judgment and that, therefore, FmHA has no authority to consider a settlement offer, and that if he wishes to make a compromise or adjustment offer, he may submit it with any related payment direct to the U.S. Attorney The County Supervisor, upon request by the debtor, may assist him in preparing the offer for submission to the U.S. Attorney, but the offer will be under the signature of the debtor. The offer may be made on Form FmHA 456-1, if acceptable to the U.S. Attorney, or in such other manner as the debtor desires. The County Supervisor will not volunteer and recommendations to the U.S. Attorney, or make any statement or commitment to the debtor which might in any way prejudice the U.S. Attorney's handling of the case. The County Supervisor will advise the debtor that any payment submitted in connection with the offer should be in the form of a money order or cashier's check payable to the Treasurer of the United States. The County Supervisor will not issue a receipt for the payment.

(b) *Claims and judgments on which U.S. Attorney's file has been closed or placed in an inactive or suspense category*—(1) *Claims.* When a claim has referred to the U.S. Attorney and his file has been closed or placed in an inactive or suspense category without taking judgment, the debt may be compromised, adjusted, canceled, or charged off under this part.

(2) *Judgments.* When a judgment has been obtained by the U.S. Attorney, the judgment account may be charged off on the FmHA records by the use of Form FmHA 456-2 under the conditions set forth in § 1864.6.

§ 1864.13 Regional Agricultural Credit Corporation (RACC) and SRRC judgments obtained in State courts by private attorneys.

RACC judgments obtained in State courts by private attorneys may be compromised, adjusted, canceled, or charged off under this part. SRRC judgments obtained in State courts by private attorneys also may be compromised, adjusted, canceled, or charged off under this part, subject to any limitations contained in guidelines available in all FmHA offices. In either case, unless the file shows that court costs have been paid and the fee of the attorney who obtained the judgment has been paid the offer will be submitted to the OGC for legal advice. If the debtor requests a satisfaction of judgment upon payment of the compromise offer of final payment of an adjustment offer, the County Supervisor will request through the State Director, the advice of the OGC and the preparation of a satisfaction. The State Director will notify the OGC in each such settlement when it is made, if the case has been referred to his office.

§ 1864.14 Approval of settlement and submission to National Office.

(a) *Approval of settlement.* Subject to the policies, procedures, and limitations set forth in this Instruction, the compromise, adjustment, cancellation, or chargeoff of debts (including principal, interest, and other charges) may be approved.

(1) By the State Director where the indebtedness involved in the settlement is less than $25,000 or where a Chapter 7 discharge in bankruptcy has been granted and the indebtedness is less than $150,000.

(2) By the appropriate Assistant Administrator where a Chapter 7 discharge in bankruptcy has been granted and the indebtedness is less that $250,000.

(3) By the Administrator where the indebtedness involved in the settlement is $25,000 or more or where a Chapter 7 discharge in bankruptcy has

been granted and the indebtedness is $250,000 or more.

(b) *Submission to the National Office.* The following types of proposed settlements, if recommended by the State Director, will be submitted to the National Office for consideration before approval or rejection by the authorized official:

(1) Settlements falling within the Administrator's authority.

(2) The debts on which settlement is proposed include rent accounts, D-1 and other leases, Lease and Purchase Contracts that have been canceled, or any other debts which have been reported to the General Accounting Office as uncollectible, if the file contains no evidence that the General Accounting Office has closed its file and agreed that FmHA resume collection efforts; or the account is known to be in the hands of the U.S. Attorney. The County Office folder should not be submitted to the National Office unless there are other accounts involved in the settlement which would require such submission.

(3) The debtor's account is involved in a fiscal irregularity investigation case upon which final action has not been taken, or shows evidence that a shortage may exist and that an inquiry should be made.

(4) The State Director desires advice from the National Office on any proposed settlement not included in this section.

(c) *Documents to be submitted to the National Office.* Cases submitted to the National Office, will be accompanied by the appropriate debt settlement forms and County Office files (except in cases in paragraph (b)(2) of this section), together with a transmittal memorandum from the State Director, making a definite recommendation for approval or rejection and furnishing any additional information considered pertinent to the proposed settlement. If the Administrator or his delegate in the National Office concurs in the approval of a proposed settlement which is within the State Director's approval authority, a copy of the memorandum notifying the State Director of such concurrence will be attached to the original debt settlement form when it is transmitted to the Finance Office.

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; sec. 10, Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegations of authority by Director, OEO, 29 FR 14764, 33 FR 9850)

[36 FR 17833, Sept. 4, 1971, as amended at 43 FR 47488, Oct. 16, 1978; 50 FR 40188, Oct. 2, 1985]

§ 1864.15 Preparation and processing of Form FmHA 456-1.

Form FmHA 456-1 will be used by debtors in making application for compromise, adjustment, or cancellation of their debts. Form FmHA 456-1 also will be used by FmHA officials to document the necessary information in connection with cancellation or compromise of the indebtedness of living debtors when it is impossible and impracticable for legal or other reasons to obtain their application, and chargeoff of indebtedness of debtors in cases described in § 1864.7(a). The form will be prepared in an original and two copies. The original and one copy will be forwarded by the County Supervisor to the State Office with the debtor's case file and the other copy will be retained in the County Office.

(a) *Preparation of Form FmHA 456-1.* (1) It is essential that Form FmHA 456-1 reflect all of the information called for on the form. The form will contain all facts essential to a determination of the debtor's reasonable ability to pay and the eligibility of the indebtedness for settlement, without reference to other sources of information such as the County Office or State Offices files.

(2) The information must be sufficient to enable persons reviewing the form to determine the debtor's financial condition and his present and apparent future repayment ability, and to support the recommendations of the County Supervisor, or County Committee, and the final action taken on the application.

(3) The space under "Remarks" in Part VII of the form should be used to document those additional facts, not

elsewhere set forth on, or not clear from other parts of the form, which are significant and essential to a determination that the requirements of this part have been met; for example, an explanation of individual items, circumstances, and conditions including a statement concerning accounting for security property or nonsecurity property purchased or refinanced with loan funds and, except when the debtor executes the form, the date of contact with debtor.

(b) *Settlement payments and receipts.* An application with which the debtor offers a lump-sum payment in compromise, with which he offers an initial payment on an adjustment offer, will be supported by the payments required therein at the time such application is filed in the County Office. Efforts will be made to avoid applications for settlement in which debtors offer a specified amount payable upon notice of approval of the proposed settlement. However, when such an offer cannot be avoided, the case will be handled as an "adjustment offer" rather than as a "compromise offer." An adequate explanation to debtors that payments made in connection with offers will be refunded in the form of Treasury checks, if the offers are rejected, should enable County Supervisors to avoid this type of offer in most cases. Payments may be in any form that is acceptable to FmHA as payments on accounts and will be receipted for, by FmHA officials who are authorized to accept collections, in the usual manner on Form FmHA 451-1, "Receipt for Payment," except: Receipts covering payments made in compromise cases will not show the usual loan identification, but instead will contain the following legend: "Compromise Offer—FmHA"; receipts covering payments in adjustment cases, made either simultaneously with the offer or prior to receipt of notice of approval, will contain the legend: "Adjustment Offer—FmHA"; and, receipts covering subsequent payments by debtors under approved adjustment will contain the legend: "Payment under FmHA adjustment approved ———." The payments referred to in this paragraph except payments in restrictive notation cases described in paragraph (b)(1) of this section, will be held in Deposits Fund Account by the Finance Office pending receipt from the State Director of notice of approval or rejection of the offer. The source of each payment will be indicated clearly on Form FmHA 451-1 in the space provided for that purpose.

(1) Except as provided in the next sentence, payments offered by debtors in compromise or adjustment of debts will be deposited in accordance with Subpart B of Part 1951 of this chapter. Checks or transmittal letters containing restrictive notations such as "Settlement in full" or "Payment in full" in those exceptional instances Form FmHA 456-1 in connection with a compromise offer will be transmitted to the Finance Office where it will be held in suspense, together with the Finance Office copies of Form FmHA 451-1 and letters containing restrictive notations, if any. The use of restrictive notations will be discouraged to the fullest extent possible.

(c) *Approval or rejection of offer.* The final action taken on an application for settlement will be indicated by the approving official who will sign and date the original Form FmHA 456-1. When the debtor's application is approved, the original of Form FmHA 456-1 will be forwarded to the Finance Office for processing and the duplicate will be retained in the State Office file. When a compromise offer or payment under an adjustment offer are involved and the debtor's offer is rejected, the State Director will request the Finance Office, by memorandum, to refund to the debtor, in care of the appropriate County Supervisor any payments made on the offer. When applications are rejected, the original of Form FmHA 456-1 will be retained in the State Office and the copy will be returned to the County Office.

(1) State Directors will notify debtors by letter of the final action taken on their applications for settlement. For approved applications, the letter should identify the debts involved in the settlement by reference to Part II.A of Form FmHA 456-1 rather than by identifying such debts specifically by amounts. In addition, the approval

letter will set forth the specific amount and terms of the offer. For rejected applications, the letter will set forth the reasons therefor, and a copy of the letter will be stapled to the original Form FmHA 456-1 and retained in the State Office. Another copy of the letter to the debtor, along with the debtor's case folder, will be returned to the County Office. In restrictive notation cases, as outlined in paragraph (b)(1) of this section, upon receipt of the copies of the rejection letter, the County Office will cancel the County Office copies of Form FmHA 456-1 and send them to the Finance Office. When canceled Form FmHA 451-1 and notices of rejection are received, the Finance Office will cancel the Finance Office copies of the suspended Forms FmHA 451-1 and return to the County Offices the checks which originally had been submitted by debtors so that they may be returned to them. When rejection of an offer appears to be necessary because of lack of information, or because the amount offered is inadequate, the State Director will request the County Supervisor to obtain the additional information or make an effort to obtain an acceptable offer, as the circumstances justify. Notice of rejection of an offer will be withheld in such cases until sufficient time has elapsed to enable the debtor to present further information or a new offer. All settlement offers will be handled promptly.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[36 FR 17833, Sept. 4, 1971, as amended at 44 FR 59895, Oct. 17, 1979]

§ 1864.16 Preparation and processing of Form FmHA 456-2.

Form FmHA 456-2 will be used to cancel debts or chargeoff judgment and nonjudgment debts under the provisions of §§ 1864.5, 1864.6, and 1864.7(b) without application of the debtor. The form will be prepared in an original and three copies. The original and three copies will be forwarded by the County Supervisor direct to the State Office with the debtor's case file.

(a) *Preparation of Form FmHA 456-2.* (1) Under "Reason for Cancellation," or "Reason for Chargeoff," only one block will be checked. When more than one reason exists in the same case, the reason most clearly established by the facts will be selected. However, other listed reasons may be given under "Facts Supporting Cancellation or Chargeoff" as additional justification.

(2) Under "Facts Supporting Cancellation or Chargeoff," the action recommended by the County Supervisor must be supported by any facts necessary to show how the requirements of this part with respect to the particular type of case, have been met. Conclusions consisting of a restatement of such requirements should not be shown.

(b) *Approval or rejection.* The final action taken with respect to the cancellation or chargeoff of debts without application will be indicated by the approving official who will sign and date the original of Form FmHA 456-2. The original and one copy will be forwarded to the Finance Office for processing unless cancellation or chargeoff of the debt is disapproved, in which case the original of Form FmHA 456-2 will be retained in the State Office and the two copies will be destroyed. The other copy of Form FmHA 456-2 will be returned to the County Office with the case folder. If the proposed action is rejected, the reasons for rejection will be inserted on the original of Form FmHA 456-2 and on the copy to be returned to the County Office.

§ 1864.17 Disposition of promissory notes.

(a) All notes evidencing debts settled by compromise, completed adjustment, or cancellation will be attached to a copy of Form FmHA 456-2 of Form FmHA 456-3, "Journal Voucher for Write-Off or Judgment," as appropriate, and returned by the Finance Office to the appropriate County Office.

(1) Notes evidencing debts settled upon application or compromised through use of Form FmHA 456-1 without signature will be returned to

the debtor or to his legal representative. In such cases, satisfaction of the security instrument(s) will be accomplished as prescribed in Part 1866 and Part 1962, Subpart A of this chapter as appropriate.

(2) Notes evidencing debts canceled without application will not be delivered to the debtor but will be placed in his case folder and disposed of pursuant to applicable procedures.

(b) Notes evidencing charged off debts will be retained in the Finance Office.

(7 U.S.C. 1989; 42 U.S.C 2942; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO, 29 FR 14764, 33 FR 9850)

[36 FR 17833, Sept. 4, 1971, as amended at 42 FR 44696, Sept. 6, 1977; 44 FR 4437, Jan. 22, 1979]

§ 1864.18 Delinquent adjustment agreements.

(a) *County Office handling.* County Supervisors will notify debtors in advance of the due dates of adjustment payments. County Supervisors should promptly contact such debtors and undertake to find out the reasons for not making their payments when due, and their plans for completing their agreements. Delinquencies of 30 days or more will be promptly reported to the State Director, along with other pertinent information, and the County Supervisor's recommendation regarding the further handling of the case.

(b) *State Office handling.* (1) In those instances in which it is apparent that the debtor is, and is likely to continue to be, financially unable to meet the terms of his agreement, consideration should be given by the State Director to avoid the existing agreement and processing a different type of settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action.

(2) The State Director may extend, for a period of ninety days, the time for making the payments when the circumstances of the case justify such extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee and County Supervisor. The Finance Office will be notified by the State Director as to any extensions granted. When a recommendation is submitted by the County Committee, the original will be forwarded to the Finance Office, if an extension is approved.

(3) When an adjustment agreement is voided, the State Director will notify the debtor giving the reasons therefor. A copy of such letter will be sent to the Finance Office and to the County Supervisor.

(c) *Disposition of payments.* If an agreement is voided, any payments that have been received will be retained as payments on the debt owed at the time of the application. Such payments may not be used as any part of a subsequent compromise or adjustment offer.

§ 1864.19 Finance Office handling.

(a) All payments evidenced by Form FmHA 451-1 bearing the legend "Compromise Offer—FmHA" or "Adjustment Offer—FmHA," except payments in restrictive notation cases described in § 1864.15(b)(1), will be held in the Deposit Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer. In cases of approved offers, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different funds, the Finance Office will prorate the amount received on the basis of the total principal balance due the respective funds. Upon notification of the rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the appropriate County Supervisor, the amount held in the Deposits Fund Account representing a rejected compromise or adjustment offer.

(b) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. In such cases, Form FmHA 456-1 will be held in a suspense file pending payment of the full amount of the approved offer. All copies of Form FmHA 450-1, "Statement of Account," or other forms used for the same purpose, issued in cases of approved adjustments, will be stamped by the Finance Office with the following legend: "Subject to approved adjustment." The original Form FmHA 456-1 in approved cases will be retained in the Finance Office.

(c) When an approved compromise or cancellation settlement is processed, or when an approved adjustment offer is satisfied and processed, the Finance Office will withdraw from the posting media file the notes evidencing the debts covered in the offer, provided all the amounts due under such notes are satisfied by the approved settlement, and will stamp thereon the following legend: "Satisfied by approved adjustment, compromise, or cancellation." (Use whichever of the three terms is appropriate for the settlement approved.) Such promissory notes will be attached to a copy of Form FmHA 456-2 or Form FmHA 456-3, as appropriate, and will be routed through the Communications and Records Section of the Administrative Services Division to the appropriate County Office. When debts are charged off, either separately or in conjunction with the settlement of other debts, Form FmHA 456-2 or Form FmHA 456-3, as appropriate, will be forwarded to the County Office, but the notes evidencing the debts charged off will be retained in the Finance Office and will not be stamped. The State Office will not receive notification of completed debt settlement actions. Any necessary followup action will be initiated by the County Office.

PART 1866—FINAL PAYMENT ON LOANS SECURED BY REAL ESTATE

Sec.
1866.1 General.
1866.2 Authorization.
1866.3 County Office actions.
1866.4 Final payment of insured Farm Ownership account when note and security instrument are held by the lender.
1866.5 Redelegation of authority.

AUTHORITY: Secs. 339, 510, 75 Stat. 318, 63 Stat. 437; (7 U.S.C. 1989, 42 U.S.C. 1480); Orders of the Secretary of Agriculture, 29 FR 16210, 32 FR 6650, unless otherwise noted.

SOURCE: 36 FR 17841, Sept. 4, 1971, unless otherwise noted.

§ 1866.1 General.

This part prescribes the authorizations, policies, and procedures of the Farmers Home Administration (FmHA) for processing final payment of all insured and direct loans to individuals secured by real estate. Also, it applies to the following organization or association loans, whether secured by real estate or other property: All Association, Watershed, Senior Citizen Rental Housing, Rural Rental Housing, Labor Housing, and Rural Cooperative Housing.

(a) *Definitions.* (1) "Mortgage" as used in this part includes real estate mortgage, deed of trust, deed to secure debt, purchase contract, or any other form of security instrument or lien on real property.

(2) "Loan insurance charge" is an annual mortgage insurance charge or annual loan insurance charge that is required to be paid separately from the interest on an insured loan.

(b) *Chattel security or note-only cases.* (1) If a loan secured by both real estate and chattels is paid in full, the chattel security instrument will be satisfied or released in accordance with Part 1962, Subpart A of this chapter.

(2) When a Rural Housing (RH) loan is evidenced by only a note and the note is paid in full, the County Supervisor will surrender the note to the borrower in the manner prescribed in § 1866.3(c)(1) and (2).

(7 U.S.C. 1989; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO, 29 FR 14764, 33 FR 9850)

[36 FR 17841, Sept. 4, 1971, as amended at 42 FR 44696, Sept. 6, 1977; 44 FR 4437, Jan. 22, 1979]

§ 1866.2 Authorization.

The County Supervisor is authorized to execute necessary releases and satisfactions and return the security instruments and related documents to the borrower in the following instances: Upon receipt of full payment of the borrower's account, including any amounts owed the loan insurance account, and upon receipt of a paid note and for insured loans, Form FmHA 451-20, "Notice and Acknowledgment of Final Payment," from the holder of the note; or upon receipt of a memorandum from the Finance Office stating that the amount of the payment is sufficient to pay the note in full if acceptable under state statutes; or upon receipt of full payment calculated from the latest Transaction Record that reflects all loan advances and other charges to the borrower's account if a release or satisfaction under these conditions is acceptable under state statutes; or upon receiving a note from the Finance Office indicating the account is satisfied by approved debt settlement action; or when the United States Attorney has accepted a compromise offer in full settlement of the account and has asked that appropriate action be taken to satisfy the security instrument(s).

(a) *State actions.* The State Director, with the advice of the Office of the General Counsel (OGC), will prescribe the forms to be used and the manner in which real estate security instruments will be released or satisfied.

(b) *Lost note.* When a paid-in-full note is not available because it has been lost, misplaced, or destroyed, the County Supervisor will in insured loan cases, obtain from the Finance Office forms of affidavit of lost note to be executed by the County Supervisor and the holder of the note, respectively; and, in direct loan cases request OGC to prepare a form of affidavit of lost note to be executed by the County Supervisor. After the affidavit(s) has (have) been executed, the release or satisfaction may be processed in the usual manner as provided in the State guideline except that the affidavit(s) will be used in lieu of the lost note. The original affidavit(s) will be delivered to the borrower and an executed copy(ies) will be retained in the borrower's case folder.

(c) *Escrow arrangements.* Escrow arrangements may be used with the advice of OGC provided the escrow agent is properly bonded. If the use of escrow agents is extension in any State, a State guideline should be prepared and submitted to the National Office for prior approval. No such escrow arrangements will be initiated by the FmHA and no part of the expense for escrow arrangement will be paid by the FmHA.

[36 FR 17814, Sept. 4, 1972, as amended at 38 FR 24346, Sept. 7, 1973]

§ 1866.3 County Office actions.

(a) *Funds remaining in supervised bank accounts.* When a borrower is ready to pay an insured or direct loan in full, any funds remaining in the supervised bank account will be withdrawn and remitted to the Finance Office for application to the borrower's account. If the entire principal of the loan is refunded after the loan is closed, the borrower will be required to pay interest from the date of the note to the date of the receipt for the refund.

(b) *Determining amount to be collected.* (1) For: Direct and insured Farm Ownership (FO), Soil and Water (SW) and RH loans to individuals; direct operating-type loans secured by real estate; and direct and insured loans to organizations, the amount to be collected for payment of the account in full will be calculated by the County Supervisor based on the information shown on the latest Form FmHA 451-26, "Transaction Record," or Form FmHA 451-31, "Borrower Transaction Record," for the borrower. The final payment will be calculated according to the guide available in all FmHA offices for preparation of Forms FmHA 451-26 or FmHA 451-31.

(i) If an annual loan insurance charge is involved and if payment is to be made during the latter part of the year, the County Supervisor will notify the borrower that another loan insurance charge will be added to the account if payment is not received before the next due date of the note.

(*a*) If the note is due January 1 and the final payment is received on or before March 31 after the due date, the borrower will pay a prorated loan insurance charge for the year in which final payment is received. If payment is received in January, he will pay one-twelfth of such charge; if payment is received in February, he will pay two-twelfths of the annual charge; and if payment is received in March, he will pay three-twelfths of the annual charge. If the account is paid in full after March 31, the loan insurance charge for the full year will be collected.

(*b*) If the note is due March 31 and the final payment is received on or before June 30 after the due date, the borrower will pay a prorated loan insurance charge for the year in which final payment is received. If final payment is received in April, he will pay one-twelfth of such charge; if payment is received in May, he will pay two-twelfths of the annual charge; and if payment is received in June, he will pay three-twelfths of the annual charge. If the account is paid in full after June 30, the loan insurance charge for the full year will be collected.

(ii) When final payment on an insured loan is to be made by refinancing by the holder of the insured note on a noninsured basis, final payment of the note account will be accomplished in the same manner as any other fully paid insured loan. However, if the insured holder refuses to advance funds to pay the account in full, the case will be referred to the Finance Office for instructions.

(2) For other Real Estate loans, whether secured by real estate or other property, the County Supervisor will request a Statement of Account from the Finance Office by use of Form FmHA 451-10, "Request for Statement of Account." (In an unusual case, where the borrower has the cash or a check on hand and insists on paying the account that day, the County Supervisor will calculate the interest and accept the payment. The County Supervisor will advise the borrower that the payment may or may not be sufficient to pay the loan in full and that he will be notified of the status of his account as soon as the County Supervisor receives the statement from the Finance Office.)

(i) The Finance Office will send the County Office Form FmHA 451-25, "Status of Account," showing the following items:

(*a*) Unpaid principal balance on note account.

(*b*) Unpaid interest balance on note account and daily accrual.

(*c*) Unpaid balance of loan insurance charges, if any.

(*d*) Unpaid balance of any amounts advanced from the insurance fund with daily accrual of interest on such advances.

(ii) Upon receipt of Form FmHA 451-25 from the Finance Office the County Supervisor will notify the borrower that he is prepared to accept final payment.

(c) *Delivery of satisfaction, notes, and other documents.* The County Supervisor will transmit the final payment to the Finance Office. In an unusual case where circumstances require delivery of an insured promissory note that is held by a private holder, at the time final payment is received by the County Supervisor, the County Supervisor will request the Finance Office to have the insured note assigned to the fund and then forward the note to the County Supervisor. The paid note may be returned to the borrower and the mortgage securing it may be satisfied in accordance with paragraphs (c)(1) and (2) of this section, unless the mortgage describes a note other than the paid note(s), or contains a "tie-in" provision, future advance clause, or similar provision covering other indebtedness to the FmHA. In the latter case, the mortgage will not be satisfied until the total indebtedness secured by the mortgage is paid. The County Supervisor may obtain advice from OGC (through the State Office) if he has any question concerning the above provisions.

(1) *Delivery of documents after notes stamped "Paid-in-Full" are received from the Finance Office.* The Finance Office, upon receipt of Form FmHA 451-2, "Summary of Remittances," or Form FmHA 370-45, "Direct Payment Card," covering the remittance which paid the account in full, will forward to the County Office the note stamped with a paid-in-full legend for direct

loans or insured loans held by the insurance fund. The note will be returned to the borrower immediately, except the note will not be surrendered until 30 days after the date of the final payment when final payment is made in a form other than currency and coin, U.S. Treasury check, cashier's check, money order, bank draft, or check issued by a responsible institution. However, when the note is needed by FmHA in getting releases or satisfactions of security instruments recorded, the note will be held until that has been done. If other indebtedness to FmHA is not secured by the mortgage, the County Supervisor will execute the satisfaction or release. When the County Supervisor delivers the stamped note to the borrower, he will also deliver the real estate mortgage and related title papers such as title opinions, title insurance binders, certificates of title, and abstracts which are the property of the borrower. The satisfaction or release will be delivered to the borrower for recording and the recording costs will be paid by the borrower, except when State law requires the mortgagee to record or file satisfactions or release and to pay the recording costs. Any water stock certificates or other intangible securities that are the property of the borrower will be returned to the borrower. Also, any assignments of income will be terminated as provided in the assignment forms.

(2) *Delivery of documents at the time final payment is made.* If the circumstances require the delivery of the promissory note and the satisfaction of the mortgage at the time final payment is made, the County Supervisor will check Item VII of Form FmHA 451-10 and make a notation in the space for remarks regarding the need for the note at the time final payment is made. Upon receipt of the statement of account from the Finance Office, and the note from the Finance Office or the lender, as appropriate, the County Supervisor will execute the satisfaction or release (unless other indebtedness to FmHA is covered by the mortgage) and make the original note with a paid-in-full legend only upon receipt of full payment balance of the borrower's account, computed as of the date final payment is received, and only when such payment is made in the form of currency and coin; U.S. Treasury check; cashier's check; certified check; money order; bank draft; or, check issued by a responsible institution. If full payment in such manner is not received or any other requirement prerequisite to delivery of the note, the satisfaction, and other instruments are not met, the County Supervisor will return the original note to the Finance Office with the proper explanation and will destroy the original and all copies of the satisfaction. When the paid note is delivered to the borrower, other documents will be delivered to the borrower as provided in paragraph (c)(1) of this section.

(3) *Method of delivery.* When documents are delivered to the borrower, if a transmittal is used, Form FmHA 140-4, "Transmittal of Documents," will be prepared and used for that purpose.

(d) *Receipt for final payment.* Form FmHA 451-1, "Receipt for Payment," will be prepared as provided in Part 1862 of this chapter.

(e) *Cost of recording or filing of satisfaction.* If State law requires the recording or filing of a satisfaction by the mortgagee, it will be accomplished as provided in the State guideline. Any cost required to be paid by the Government will be paid by voucher in the manner provided in applicable FmHA procedures.

(f) *Property insurance.* When the borrower's loan has been paid in full and the satisfaction or release of the mortgage has been executed, the County Supervisor will execute the release or mortgagee interest in the insurance policy as provided in Part 1806 of this chapter and deliver the policy to the borrower.

(g) *Notice to holder.* In insured loan cases, the Finance Office will prepare Form FmHA 451-20 with all of section I completed, including the address of the appropriate County Supervisor. The Finance Office will check the appropriate block in section II and forward an original and one copy to the holder and one copy to the appropriate County Supervisor.

(1) When the County Supervisor receives the original executed Form

FmHA 451-20, he will substitute the original for the copy in his file. If the original executed copy is not received within 30 days after receipt of the copy, the County Supervisor will so notify the Finance Office.

(Sec. 4, 64 Stat. 100; 40 U.S.C. 442; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; sec. 10, Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture (7 CFR 2.23); delegation of authority by the Assistant Secretary for Rural Development (7 CFR 2.70); delegations of authority by Director, OEO (29 FR 14764, 33 FR 9850))

[36 FR 17841, Sept. 4, 1971, as amended at 37 FR 14992, July 27, 1972; 42 FR 48326, Sept. 23, 1977]

§ 1866.4 Final payment of insured Farm Ownership account when note and security instrument are held by the lender.

(a) In case an insured FO borrower, whose note and security instrument are held by the lender (and the security instrument is not under a trust assignment or declaration of trust), the following additional actions will be taken:

(1) Upon receipt from the lender of the promissory note marked "paid-in-full," the original security instrument and the instruments of satisfaction or release, the County Supervisor will deliver to the borrower the note and other documents as provided in § 1866.3. In addition to the satisfaction or release, Form FmHA 451-18, "Consent and Release of Interest of United States (Insured Farm Ownership Loans)," will be prepared and distributed.

(2) If a situation develops which is not covered by this paragraph, the borrower's County Office file will be forwarded to the State Director for assistance and special instructions for servicing the particular case. The State Director, with the advice of OGC, will provide instructions for handling such a case.

§ 1866.5 Redelegation of authority.

County Supervisors are authorized to redelegate to County Office employees in bonded positions the authority to execute releases and satisfactions in accordance with this part, provided it is determined that the individual to whom such authority is being redelegated has had sufficient training and experience to exercise properly such authority.

SUBCHAPTER F—SECURITY SERVICING AND LIQUIDATIONS

PART 1872—REAL ESTATE SECURITY

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

Sec.

1872.1 General.
1872.2 Preservation of security property and protection of liens.
1872.3 Subordination of FmHA mortgage to permit refinancing, extension, reamortization, increase in amount of existing prior lien, or to permit a prior lien.
1872.4 Consent by partial release, subordination, or otherwise, to sale or other disposition of portion of or interest in security, except leases.
1872.5 Subordination of FmHA real estate mortgages to easements to the Bureau of Sport Fisheries and Wildlife.
1872.6 Subordination or FmHA's lien to the Commodity Credit Corporation's (CCC's) security interest taken for loans for farm storage and drying equipment.
1872.7 Consent to junior liens.
1872.8 Consent to borrower's granting lease of security.
1872.9 Transfer of upland cotton, peanut or tobacco allotments.
1872.10 Severance agreements.
1872.11 Disposition of proceeds of partial release, subordination, and consent transactions.
1872.12 Assignment and release of soil bank or similar program payments.
1872.13 Deceased borrower.
1872.14 Bankruptcy and insolvency.
1872.15 Servicing note-only cases.
1872.16 Release of FmHA mortgage without monetary consideration on basis of additional security or because of mutual mistake or non-existence of evidence of indebtedness or valueless liens.
1872.17 Liquidation action.
1872.18 Transfer of real estate security.
1872.19 [Reserved]
1872.20 Servicing non-program loans (NP).
1872.21 Taking liens on real estate as additional security in servicing FmHA loans.
1872.22 [Reserved]
1872.23 Cosigners—Rural Housing (RH) loans.
1872.24 Submission to National Office of certain partial release, subordination, consent, or other transactions.
1872.25 State Supplements and reference to the OGC.
1872.26 Redelegation of authority.
1872.27 Nondiscrimination.

EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN BUREAU OF SPORT FISHERIES AND WILDLIFE AND THE FARMERS HOME ADMINISTRATION

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70, unless otherwise noted.

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegations of authority by Director OEO, 29 FR 14764, 33 FR 9850, unless otherwise noted.

SOURCE: 40 FR 15066, Apr. 4, 1975, unless otherwise noted.

§ 1872.1 General.

(a) *Purpose.* The purpose of this Instruction is to delegate authority and prescribe policies and procedures for servicing and liquidating real estate security for Farmers Home Administration (FmHA) insured Farmer Program loans, including leasehold interests and certain note-only cases. Where borrowers have *both* FmHA Farmer Program and Single Family Housing (SFH) loans, security servicing will be according to this Instruction. However, where borrowers are indebted for SFH loans *only*, security servicing will be according to Subpart C of Part 1965 of this chapter.

(b) *General policies.* Real estate security will be serviced in a manner to accomplish the loan objectives and protect the Government's financial interest. To accomplish these purposes, the real estate security will be serviced in accordance with the security instruments and related agreements, including any authorized modifications, provided the borrower has reasonable prospects of accomplishing the loan objectives, properly maintains and accounts for the security, and otherwise meets the loan obligation, including loan repayment, in a satisfactory manner. When the above conditions are not satisfied, or it is determined that the loans must be liquidated for other reasons, and sufficient legal grounds for liquidation exist, prompt action will be taken to liquidate the security to protect the Government's financial interest.

(c) *Borrower's responsibility.* Each borrower is responsible for repaying principal and interest on a timely basis pursuant to the loan documents, paying real estate taxes, providing adequate property insurance, maintaining, protecting, and accounting to the FmHA for all real estate security, and complying with other loan requirements.

(d) *County Supervisor responsibilities.* The County Supervisor is responsible for informing each borrower of his responsibilities in connection with the loan, seeing that the security is being properly maintained and accounted for, and for servicing the security in accordance with this Subpart. When a borrower fails to maintain, protect, or account for the security as required by the loan documents, or makes unauthorized disposition or use of any security, prompt action will be instituted to protect the FmHA's interest. The County Supervisor will obtain any legal advice he needs from the Office of the General Counsel (OGC) through the State Director. In cases that have been referred to the OGC for legal action, no further action will be taken by the County Supervisor or other MmHA personnel without prior clearance with the OGC. If the case has been referred to the U.S. Attorney, clearance with the U.S. Attorney will be obtained through the OGC.

(e) *Servicing insured loans*—(1) *Servicing actions.* Servicing actions for insured loans will be the same as for direct loans except that in voluntary conveyance and foreclosure cases when the insured note is not held in the County Office, the Finance Office will be requested to obtain assignment of the insured loan to the insurance funds as provided in § 1955.5(a) of Subpart A of Part 1955 of this chapter, and when an insured Farm Ownership (FO) mortgage running to the lender as mortgagee is not held by the FmHA under trust assignment, or declaration or trust, or in the insurance fund (called insured FO mortgage held by the lender in this subpart) and a written subordination or partial release of other servicing documents is requested, the document will be executed by the holder on a form prepared or approved by the OGC. In such cases, contacts with the holder will be made by the State Director and the holder's execution of the document will constitute his consent.

(2) *Execution of documents by Government.* The County Supervisor is authorized to execute all necessary forms, satisfactions, releases, and other documents required to complete any transactions in this subpart after the action has been approved by the appropriate approval official. The documents will be executed in behalf of the United States in the following form:

(i) "United States of America," when the mortgage names the United States as mortgagee, or when a mortgage running to the lender is not under a trust or declaration of trust and the note is held by the insurance fund.

(ii) "United States of America, for Itself and as Trustee," when an FO mortgage is held by the FmHA under a trust assignment or declaration of trust, regardless of whether the note is held by a lender or by the insurance fund.

(f) *Consent of lienholders.* When this subpart requires the consent of other lienholders, before the FmHA consents to a transaction which affects the security of its lien, such consent will be obtained and furnished to the FmHA by the borrower. The consent will, unless otherwise provided in a state supplement, include agreement as to the disposition of any funds involved in the transaction.

(g) *Definitions.* Unless otherwise indicated, the term "FmHA loans," "FmHA accounts," "FmHA interests," "FmHA security," "FmHA debts," and similar terms apply to indebtedness owed to or insured by the United States of America acting through the FmHA, and to related security instruments. The term "note" includes any note, bond, assumption agreement, or other evidence of indebtedness. The term "mortgage" includes deeds of trust and similar real estate security instruments and chattel security instruments where appropriate.

"County Supervisor" means "County Supervisor" and "Assistant County Supervisor" when in the opinion of the County Supervisor the Assistant County Supervisor has been sufficiently trained to competently perform the required actions and has delegated such authority to the Assistant County Supervisor in writing.

"Farmer program loans" means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Economic Opportunity (EO), and Special Livestock (SL) loans, and/or Rural Housing Loans for farm service buildings (RHF).

[40 FR 15066, Apr. 4, 1975, as amended at 41 FR 32577, Aug. 4, 1976; 47 FR 19964, May 10, 1982; 50 FR 39638, Sept. 30, 1985; 50 FR 45750, Nov. 1, 1985]

§ 1872.2 Preservation of security property and protection of liens.

(a) *Inspection of security.* The County Supervisor will inspect farm real estate security every three years for accounts that are current. More frequent inspections will be made when a borrower is delinquent or otherwise in default or when problems exist involving the security property. Security on nonfarm tracts will be inspected only if liquidation action is likely to be taken, the property has been abandoned, when necessary to protect the interest of the Government, or whenever requested by the borrower. If all or part of the security is located in another County Office area, the County Supervisor for that area may be requested to inspect the property.

(b) *Action by FmHA for account of borrower.* When necessary to protect the interest of the Government, actions will be taken by FmHA for the account of the borrower as provided below. Any advances made for such purposes will be paid by Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," or other approved voucher and charged to the borrower's account.

(1) *Management/maintenance or lease of security.* Services for the management, care, and maintenance of security property will be obtained according to § 1955.55 or security property may be leased according to the provisions of § 1955.66 of Subpart B of Part 1955 of this chapter.

(2) *Taxes and assessments.* Real estate taxes and assessments will be handled in accordance with Part 1863 of this chapter.

(3) *Insurance.* For FmHA loans secured by liens on real estate, property insurance will be obtained and serviced in accordance with requirements for the kind of loan involved, Subpart A of Part 1806 of this chapter, and when appropriate Subpart B of Part 1806 of this chapter.

(4) *Maintenance.* In abandonment and pending liquidation cases, the State Director may authorize emergency repairs necessary to protect the interest of the FmHA. In all other cases, complete information concerning the borrower's failure to adequately maintain the security property and the State Director's recommendation for continuing the loan will be submitted to the National Office for prior authorization to advance funds for needed repairs. If there is a prior lien, expenditures for maintenance will not be made unless the prior lienholder refuses to make them. Evidence of this unwillingness to do so should be included in the case file.

(5) *Management of abandoned property or property after approval of foreclosure.* See § 1955.55 of this chapter.

(c) *Actions by third parties which affect security.* The borrower will be expected to protect his own interest in condemnation, trespass, quiet title and other cases affecting the security. Third party actions include court or other actions in which the security property is involved. When the County Supervisor learns of any action taken by third parties which materially affects the security interests of the Government, he will send complete information concerning the action, the County Office case file, and his recommendations to the State Director. When the Government or the County Supervisor is made a party to a court action, or when any suit is brought to condemn, impose a lien upon, or otherwise affect any part of the FmHA real estate security, information furnished by the County Supervisor will include a copy of the petition or complaint, if available to him, a statement of account, a current appraisal report, the name and address of borrower's attorney, if any, and any other pertinent information. The State Director will, in all litigation cases and in any other case where appropriate, after receiving the advice of the OGC, advise the County Supervisor of the actions to be taken to protect the Government's interest. When the State Director determines that foreclosure or other actions which would cause the borrower to lose possession of the property is imminent he may give consideration to making a subsequent loan, as appropriate, or approving a subordination to permit another lender to make a loan to satisfy such action when necessary to enable the borrower to retain the property, provided he has the ability and resources necessary to overcome the problems that caused the action, and, the third party agrees to postpone further action pending the processing of a subsequent loan or subordination. The State Director will notify the County Supervisor of the actions to be taken to protect the Government's interest.

(1) *Sale under prior lien foreclosure.* When a prior lien foreclosure sale is to be held and the State Director determines that a substantial net recovery on the Government's interest can be made by acquiring and reselling the security, he will authorize a bid in accordance with the applicable portions of § 1955.15 of Subpart A of 1955 of this chapter. Such bid may provide for payment of the prior lien indebtedness and costs incidental to the sale which must be paid from the sale proceeds. When under state law it is necessary, prior to such foreclosure, to acquire the prior lienholder's rights to protect the Government's junior lien interest, and in other situations when it is advantageous to the Government to pay the prior lien in full before the foreclosure sale, payment of the prior lien and required costs may be made with the advice of the OGC, provided the Government will obtain a greater recovery of the secured debt (not an inventory profit) than it could by bidding at the prior lien foreclosure sale, and the FmHA account after acquisition of the prior lien will be liquidated as provided in § 1872.17. Information clearly supporting the action as being to the Government's financial advantage must be documented and made as part of the file.

(i) *Lienholder debt.* The prior lienholder will be contacted to determine the amount of his indebtedness including the cost of foreclosure sale and whether payment by SF 1034 is acceptable to him if the Government is the successful bidder at the sale. If the prior lienholder requires a cash payment, SF 1034 will be processed in sufficient time for the County Supervisor to receive a U.S. Treasury check before the sale. Requesting the check, payment of the bid, and payment of any other costs by using SF 1034 will be in accordance with the applicable portions of § 1955.15 of this chapter. The costs will be charged to the borrower's account.

(ii) *Title evidence.* Title evidence will be obtained prior to making a bid on the property or acquiring the prior lienholders rights.

(iii) *Assignment.* An insured loan which is not held by the insurance fund will, whenever possible, be assigned to the insurance fund before the foreclosure sale. Otherwise, the assignment will be completed as soon as feasible after the foreclosure sale.

(iv) *Final reporting.* (A) When FmHA enters a bid or is the successful bidder at the foreclosure sale, reporting actions will be in accordance with the applicable portion of § 1955.15(d)(1) of Subpart A of Part 1955 of this chapter.

(B) When the State Director determines that no bid will be entered by FmHA, the County Supervisor will nevertheless attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. A narrative report will be sent to the Finance Office when no recovery is made by the Government. If the Government is to rely on its redemption rights, that fact will be indicated in the report.

(v) *Servicing Government redemption rights.* If the Government did not have an opportunity or for other reasons did not protect its interest at the time of the foreclosure sale by a prior lienholder and has any redemption rights, the State Director will determine whether to redeem the property before the redemption period expires. Such determination will be made after considering all factors including the value of the property or changes in its value after the sale and any other pertinent information. This determination will be made at a time sufficiently prior to expiration of the redemption period to permit exercise of the Government's rights. If redemption of the property is appropriate, the State Director's recommendation, accompanied by complete information showing the basis for not acquiring the security at the sale and factors which justify redemption of the property, should be sent to the National Office for prior consideration. The report should be accompanied by an opinion of the OGC stating that the redemption is legally authorized. If it is decided not to redeem the property, the right of redemption may be sold for its value by the State Director. There is no authority to dispose of redemption rights without consideration.

(2) *Foreclosure sale subject to FmHA mortgage.* If a lien junior to the FmHA lien is foreclosed and the property is sold subject to the FmHA mortgage, the account will be transferred under § 1872.18, if appropriate. Otherwise, it will be liquidated as provided in § 1872.17.

(d) *Divorce actions.* When borrowers with loans on farm are involved in a divorce action, the County Supervisor will submit the case to the District Director after the final divorce decree has been granted for his advice or concurrence in servicing the account. When borrowers whose loans are secured by a mortgage on a nonfarm tract are involved in a divorce action, the County Office file will be submitted to the District Director for advice when the County Supervisor is uncertain of the servicing actions needed to protect the Government's interest or if continuation of the loan with the remaining borrower is not authorized. A subsequent loan made as a result of a divorce action will be handled in accordance with § 1872.18(b)(14).

(e) *Abandonment.* When the borrower has removed personal property from the farm or home or the County Supervisor otherwise has reason to believe security property has been abandoned by the borrower, the County Supervisor will make the determinations and take the actions outlined in § 1955.55 of Subpart B of Part 1955 of this chapter to protect the security property.

[40 FR 15066, Apr. 4, 1975, as amended at 41 FR 32577, Aug. 4, 1976; 50 FR 23901, June 7, 1985; 50 FR 36938, Sept. 30, 1985; 50 FR 45750, Nov. 1, 1985]

§ 1872.3 Subordination of FmHA mortgage to permit refinancing, extension, reamortization, increase in amount of existing prior lien, or to permit a prior lien.

(a) *Reamortizing Existing FmHA Debts.* Existing FmHA loans may be reamortized to permit a loan of another lender in lieu of a subsequent loan of the kind involved with prior approval of the District Director or State Director as applicable. Authority to reamortize an account will be granted when it is determined that the borrower cannot reasonably be expected to meet installments due unless the account is reamortized. When a loan is reamortized, it will be processed in accordance with applicable program regulations. Section 1872.20(b)(2) of this subpart should be referred to if an NP loan is involved.

(b) *Use of other lenders' funds to reduce FmHA debts.* In connection with a subordination primarily for other purposes, funds of another lender may be used to pay on an FO, Soil and Water (SW), Recreation Loan (RL), Operating Loan (OL), or Emergency loan (EM) only to the extent that is necessary to accomplish the objectives of the FmHA loan involved and to establish the borrower's operations on a sound basis within his ability to pay. Also, when a borrower owes any of the aforementioned loans and a Rural Housing (RH) loan, the funds of another lender may be used to pay the amount delinquent on the RH loan or to refinance the total RH debt when necessary. It is not intended that the FmHA lien will be subordinated for removal of a delinquency that the borrower could be expected to pay within five years. It is also the policy to only permit payment of that portion of the FmHA debt that is necessary to avoid failure in connection with obtaining additional resources essential to success. This authority will be used in those cases that will provide for meeting the FmHA objectives as specified in § 1872.1(b) of this subpart. In such cases, the narrative justification and the case file will be sent to the National Office prior to development of the subordination.

(c) *Conditions for subordination.* A subordination may be granted subject to the following conditions:

(1) *Refinancing.* The borrower is unable to refinance the FmHA debt on terms which he can reasonably be expected to meet;

(2) *Objectives.* The transaction will further the objectives for which the FmHA loan was made;

(3) *Prior lien.* The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them, as well as all other debts;

(4) *Market value.* The amount of any prior lien plus the balance of the FmHA debt will not exceed the market value of the security; except for an FO, RL, Land Conservation and Development (LCD), or SW loan, it will not exceed the market value of the security or $225,000, whichever is less. When the FmHA indebtedness was not fully secured by the market value of the security before the transaction, a subordination may be granted only if the market value of the total security will be increased by an amount at least equal to the amount of the additional advance. The $225,000 limitation will not apply to loans if, because of fire, flood, windstorm, or other casualties, the subordination is necessary for land development or for the repair or replacement of essential buildings to put the property in livable and operable condition or to protect it against further deterioration. However, the subordination will not permit the total indebtedness to exceed the present market value of the security;

(5) *Stock.* An assignment of the beneficial interest in any stock required in connection with a loan will be obtained as collateral security, when possible, and when needed for security; and

(6) *Security.* The FmHA secured indebtedness after the subordination will be adequately secured or will not be adversely affected by the transaction.

(d) *Purposes of subordination.* A subordination may be granted to:

(1) *Refinance, extend, or reamortize.* Refinance, extend, or reamortize an existing prior lien provided the amount of the indebtedness secured by the prior lien, as of the date of the transaction, is not increased by more than reasonable costs incident to loan closing, plus funds for the purchase of any required stock.

(2) *Increase.* Increase the amount of prior lien or permit a new prior lien when the funds will be used:

(i) *Nonfarm tract.* On a nonfarm tract securing RH loans for purposes for which RH nonfarm loans are authorized subject to the limitations that would be applicable if an RH loan were made. When the mortgage includes nonfarm property larger than a minimum adequate site, the subordination may be granted on the excess land for purposes not inconsistent with the purposes for which the loan was made.

(ii) *Farm.* On a farm which secures an FO loan only or an FO and any other type FmHA loan, for any purpose for which an FO loan can be made. Also, an RL, SW, RH, or EM loan may be subordinated for development or enlargement purposes and for any purpose for which that type loan may be made. However, if the RH loan was made to finance a dwelling and the loan is secured only by the dwelling and dwelling site, the RH loan will be subordinated only for purposes for which an RH nonfarm loan may be made.

(3) *Requirements.* Any transaction approved under § 1872.3(d)(2) (i) or (ii)

must meet the following additional requirements:

(i) The proposed use of the funds will improve the borrower's ability to repay the FmHA loan(s) or is necessary to place the operation on a sound basis.

(ii) In the case of either an FO loan or OL loan, the use of the funds will not result in the farm being larger than a family farm or family farming operation.

(iii) Any proposed development will be planned and performed in accordance with Part 1804 Subpart D and Part 1924 Subpart A of this chapter or in a manner directed by the creditor which reasonably attains the objectives of Part 1804 Subpart D and Part 1924 Subpart A of this chapter and is concurred in by the State Director.

(iv) Funds to be used for development or to acquire land will be handled as prescribed for FO loan funds in Part 1902, Subpart A, except that if the creditor will not permit the use of a supervised bank account, arrangements satisfactory to the FmHA which will assure that the funds will be spent for the planned purposes may be substituted.

(v) In cases of land purchase or exchange of property, the FmHA will obtain a valid mortgage on such acquired land. Title clearance and loan closing will be required the same as for an initial or subsequent FO loan as appropriate. The mortgage will be recorded when the subordination is delivered to the other lender, or immediately after the other lender records its mortgage.

(e) *Request for subordination.* When a borrower requests the FmHA to subordinate a mortgage Form FmHA 465-1, "Application for Partial Release, Subordination, or Consent," will be prepared. If an agreement to give notice of foreclosure is required for approval of an initial FmHA loan, an agreement with a new prior lienholder will be obtained as required in § 1807.2(f)(5) of this chapter. In case of an insured FO mortgage held by the lender, the holder's consent will be obtained in accordance with § 1872.1(e). Any junior lienholder's consent to the transaction and use of the proceeds will be obtained as provided in § 1872.1(f) of this subpart.

(f) *Appraisal.* A current appraisal report will be prepared when property is to be purchased or exchanged, or when the existing appraisal report is more than two years old or is inadequate to make the determination required in this subpart. When an appraisal is required by FmHA in connection with a subordination being granted to the Federal Land Bank (FLB), the appraiser may recommend, or the loan approval official may find, the market value of the total security to be equal to the market value of the real estate plus the value of the FLB stock. This determination will be recorded on a separate sheet and attached to the appraisal report. When a subordination is granted in connection with an FO, SW, or RL loan to permit a loan by another lender, the FmHA appraiser is authorized to use the appraisal report prepared for the other lender in determining the recommended market value of the property in accordance with Subpart A of Part 1809 of this chapter.

(g) *Approval authority.* The County Supervisor and District Director are authorized to approve transactions under § 1872.3 when the total indebtedness against the security after the transaction is completed does not exceed $100,000 and $160,000 respectively. The County Supervisor, however, may not approve transactions that involve refinancing of an FmHA debt. The State Director is authorized to approve transactions that exceed the approval authority of the County Supervisor and District Director.

(h) *Processing.* When the approval of the transaction by the State Director is required or when the County Supervisor or District Director desires advice before his approval of the transaction, the borrower's case folder with current documents to support the applicable determinations such as, where appropriate, Forms FmHA 431-2, "Farm and Home Plan," FmHA 431-1, "Long-Time Farm and Home Plan," FmHA 431-3, "Household Financial Statement and Budget," FmHA 422-1, "Appraisal Report (Farm Tract)," FmHA 1922-8 "Residential Appraisal Report," FmHA 440-2, "County Committee Certification or Recommendation," other necessary forms, and Form FmHA 465-1 will be sent to the State Office. Form FmHA 440-2 will be completed in all cases involving a subordination for the purchase of additional land. After approval of the transaction, it will be closed in accordance with State Supplements to the maximum extent possible as provided in § 1872.25. However, when legal advice on an individual case is necessary, Form FmHA 465-1, any subordination form furnished in connection therewith, the original or a copy of the FmHA mortgage, the refinancing mortgage or agreement, and related documents will be submitted to the OGC for review and preparation of the necessary instruments and closing instructions. The documents and closing instructions will be sent to the County Office. If the signature of the State Director is required on some of the instruments, the docket and closing instructions will be routed through the State Office. The transaction will be completed in accordance with the closing instructions.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sec. 10, Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[40 FR 15066, Apr. 4, 1975, as amended at 42 FR 31763, June 23, 1977; 44 FR 38441, July 2, 1979; 44 FR 46251, Aug. 7, 1979; 45 FR 39794, June 12, 1980; 48 FR 52565, Nov. 21, 1983; 50 FR 39638, Sept. 30, 1985; 50 FR 45751, Nov. 1, 1985]

§ 1872.4 Consent by partial release, subordination, or otherwise, to sale or other disposition of portion of or interest in security, except leases.

The consent of FmHA or other lienholders may be in the form of a partial release, subordination, or other form of written consent, depending on the circumstances. If an NP loan is involved, § 1872.20(b) of this subpart also applies. The consent authorized herein is applicable to the disposition of security, or an interest in the security, rather than to a release of security granted to a mortgagor upon reduction of the debt from regular or other personal funds. A formal release may not be delivered for 15 days after the payment is received unless such payment is made in the form of cash, money order, certified check, or check from a reputable lending agency. Releases not delivered will usually be voided 30 days after notifcation to the requesting party that the release is available.

(a) *Provisions of FmHA mortgages.* In all FmHA mortgages except RH loan mortgages prepared before October 1, 1950, and a few OL, EM, Special Livestock (SL), and Water Facilities (WF) loans mortgages, the borrower has agreed not to sell, transfer, assign, mortgage, or otherwise encumber the security or any portion of or interest in it, without the prior written consent of the mortgagee. Furthermore, even in the case of the few RH, OL, EM, SL, and WF loan mortgages not requiring FmHA consent, any property, or any part thereof or interest therein which is subject to the FmHA mortgage and which is disposed of by the borrower without consent remains subject to the mortgage lien. In all FmHA mortgages the borrower expressly agrees not to engage, without prior consent, in certain specified transactions, including the cutting or removal of timber, or mining or removal of gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary domestic purposes.

(b) *Consent and partial release and subordination forms.* When FmHA consent is requested, it will be given by approving a completed Form FmHA 465-1 if the transaction meets the conditions of § 1872.4(c). Also, when requested, the FmHA will give a written partial release or subordination on Form FmHA 460-1, "Partial Release," approved by the OGC. Written consent of any prior or junior lienholders will be obtained by the borrower and delivered to the FmHA if any proceeds are not to be applied on liens in accordance with their priorities. When an insured FO mortgage is held by the lender, his consent will be obtained only if a written partial release, subordination, or other written servicing document is requested. Any such consent will be obtained in accordance with § 1872.1(f).

(c) *Conditions of FmHA consent.* FmHA consent may be granted and a partial release or subordination executed if the consideration is adequate for the security property being disposed of, or rights granted; orderly repayment of the FmHA indebtedness will not be impaired; the transaction will not interfere with successful operation of any farming enterprise or other enterprise providing repayment ability of the borrower; the market value of the security is adequate to secure the unpaid balance of the FmHA debts, or if the market value of the security before the transaction was inadequate to fully secure the FmHA debts, the FmHA's security interest is not adversely affected; and the provisions of § 1872.4 (d) and (e) and § 1872.11 are complied with. Exceptions to the foregoing sentence are provided in § 1872.4(c) (1) and (2).

(1) *Condemnations.* The conditions of consent as stated in paragraph (c) of this section that the consideration is adequate for the security property being disposed of, or rights granted, and that orderly repayment of the FmHA indebtedness will not be impaired will not apply in condemnation cases after final judgment or award which is not appealed.

(2) *Costs.* In any case of consent, partial release, or subordination the County Supervisor may authorize the borrower to use a portion of the proceeds to pay customary incidental costs appropriate to the transaction and reasonable in amount which the borrower cannot arrange to pay from personal funds or cannot have the purchaser pay, including real estate taxes which must be paid to consumate the transaction. Such costs may, for example, include the following in justifiable cases: Costs of title examination, surveys, abstracts, title insurance, reasonable attorney's fees, and recording fees, reasonable attorneys' fees and court costs in condemnation cases, costs necessary to determine the reasonableness of an offer or asking price, such as fees for appraisal of minerals, land, or timber when the necessary appraisal cannot be obtained without costs, real estate brokers' commissions when a borrower can reasonably expect to obtain proceeds in an amount at least equal to the commission in excess of what could otherwise be obtained, or additional income tax which the borrower is required to pay for the year because of the capital gain or mineral royalty payments on the transaction. The amount of the estimated tax on the particular transaction will be deposited in the supervised bank account. Any deposited funds not needed to pay the borrower's adjusted tax liability for the year of the transaction will immediately be applied on the account as an extra payment. In any state in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of a portion of the land from the mortgage, the borrower must pay any costs for postage and insurance of the note while in transit. The County Supervisor will advise the borrower when he requests a partial release that he must pay such costs. If the borrower is unable to pay the costs from personal funds, they may be deducted from the sales proceeds. The amount of the charge will be based on the statement of actual costs furnished by the lender. A subordination approval will also include additional advances by the lender as necessary for taxes, insurance, emergency repairs for maintenance, and liquidation expenses.

(3) *Appraisals.* When the official authorized to approve the transaction is uncertain whether a proposed consideration is adequate or for any other reason considers an appraisal necessary to complete Form FmHA 465-1, or when the transaction involves more than $5,000, a new appraisal report will be obtained in accordance with the applicable appraisal procedure. However, a new appraisal report need not be obtained if there is an appraisal report not over two years old in the case file which will permit the official authorized to approve the transaction to make the proper determination of the market value of the property being retained and the market value of the portion to be released. When a new appraisal is not required, the appraiser will indicate his determination of values and the basis for it in the comments section of the existing appraisal report. The notation will be initiated and dated. When a new appraisal report is required, it will be

completed to show the present market value of the property being retained. Also, the present market value of the property being released will be shown under the comments section of the same appraisal report. Information regarding sales of comparable properties used in arriving at the present market value of the property being released will be shown in the comments section or on an attached sheet.

(i) *Stationary units.* If timber or minerals including sand, gravel, or stone, which appear to be worth more than $2,000 are to be sold on the basis of the timber stand or the mineral deposit rather than the units to be removed, the borrower will be encouraged to obtain the assistance of a qualified technician other than an FmHA employee to advise him of the quality or value of the timber or minerals and the manner in which they should be sold. Generally, such assistance can be obtained from State or Federal employees who are located in the area.

(ii) *Units removed.* When timber or minerals, including sand, gravel, or stone, are to be sold on the basis of the units to be removed, or when an easement or a right-of-way is to be sold or granted, the employee authorized to make the appraisal may insert, date, and initial a notation on the existing appraisal report instead of making a new appraisal report. The notation should show the unit value of timber or minerals, or the value of the easement or right-of-way, based on the consideration being paid for similar items in the area, and the manner in which the remaining property will be affected. If the market value of the remaining property is significantly decreased, a market value appraisal of the remaining property usually will be required.

(d) *Authority of the County Supervisor and District Director.* The County Supervisor and District Director are authorized to approve transactions under § 1872.4, except those specifically reserved to the State Director as set forth in § 1872.4(e), when the total indebtedness against the security does not exceed $100,000 and $160,000, respectively. Also, when liquidation in accordance with § 1872.17 is not pending, the County Supervisor is authorized to approve transactions when the entire proceeds (other than costs authorized in § 1872.4(c)(2), or normal income as defined in § 1872.11(b) will be applied on the liens in the order of their priority. In case of a three percent loan for forestry purposes, the application for consent or release involving the harvest or sale of forest products will be forwarded to the District Director for approval if the harvest or sale is not in strict accordance with provisions of the initially-approved forestry plan, future repayments on the three percent advance are scheduled on any basis other than equal annual installments, there is a lien on the forest land prior to the lien of the FmHA, or there is a delinquency on any FmHA real estate loan. The County Supervisor and District Director are also authorized to approve transactions involving exchange of all or part of the security for other real estate, use of all or part of the proceeds for development or enlargement or as provided in § 1872.4(d)(3), sale of a portion of the security, except security for RH loans on nonfarm tracts, for its market value and on terms of not less than 10 percent down, and payments not to exceed 10 annual installments of principal plus interest at not less than eight percent per annum or the rate on the borrower's note, whichever is greater, and sale of a portion of the security for RH loans on nonfarm tracts for its market value on terms of not less than 10 percent down, and payments not to exceed five annual installments of principal plus interest at not less than eight percent per annum or the rate on the borrower's note, whichever is greater, provided: The Government's security rights, including the right to foreclose, are not impaired, the downpayment and subsequent payments are applied to the FmHA debts, prior liens, or are used as authorized in this Subpart, any security instruments the borrower obtained in the transactions are assigned to the FmHA, the property sold is not released prior to full payment of the account or receipt of the sale price with proper application or release of such proceeds, and unless appropriate reamortization is made in accordance with § 1951.314 or § 1951.40, and the borrower understands and agrees that such sale proceeds will not affect his primary and continued obligation for making payments under the note. In any case in which the proceeds under § 1872.11(a) will not be applied on prior liens or FmHA accounts secured by real estate liens, the following requirements must be complied with:

(1) *Development or enlargement.* Use of any proceeds for development or enlargement must be necessary to improve the borrower's debt-paying ability and to place his operation on a sound basis or otherwise further the objectives of the loan. In the case of an FO or OL loan, the use of proceeds for such purposes will not result in making the farm larger than a family farm.

(2) *Development.* Any proposed development work will be in accordance with Part 1924 of this chapter.

(3) *Inadequately secured loans.* When FmHA loans secured by a lien on real estate will be adequately secured after the transaction, proceeds not to exceed an amount equal to the equity in the security may, with the consent of other lienholders, be applied to inadequately secured FmHA loans, to reduce them to the extent that the security is adequately or up to $2,500 may be used for development of nonowned land essential to the borrower's operation whether or not it is taken as security for the loan. If funds are used on nonowned land it must be determined that the improvements are essential to his operation or repayment ability and that the borrower has tenure arrangements that will justify the use of such proceeds on that land. Proceeds released for payments on other FmHA debts will be applied as extra payments unless the District Director approves a specific written request from the borrower to apply proceeds on a delinquency or currently maturing instaliment because the borrower is otherwise unable to make such payments. That part of the proceeds not applied to any prior lien or inadequately secured FmHA loan must be applied to the FmHA lien on the security property of the highest priority if not used to develop or enlarge the security.

(4) *Funds.* Funds to be used for development or enlargement will be handled in the manner prescribed in Part 1902, Subpart A.

(e) *State Director's authority.* The State Director is authorized to approve transactions (1) that exceed the approval authority of the County Supervisor and District Director, or (2) involving an easement or fee title right-of-way granted or conveyed without monetary compensation or for a token consideration if the Government's security interests are not adversely affected.

(f) *Processing.* When the approval of a transaction by the State Director is required, or the County Supervisor or District Director desires advice in connection with his approval of the transaction, the borrower's case folder, Form FmHA 465-1, and any other information pertinent to the transaction will be sent to the State Office. In an exchange of security, the provisions of this subpart applicable to a sale of a portion of the security will apply to the property being released. The provisions of Subparts A, B, and C of Part 1943 of this chapter applicable to the purchase of land will apply to land being acquired in connection with FO, RL, and SW loans. The provisions of that subpart applicable to the title clearance, security, and appraisals will apply to lands being acquired in connection with other loans.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sec. 10, Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[40 FR 15066, Apr. 4, 1975, as amended at 42 FR 31763, June 23, 1977; 42 FR 44669, Sept. 6, 1977; 44 FR 1702, Jan. 8, 1979; 44 FR 38441, July 2, 1979; 44 FR 46251, Aug. 7, 1979; 45 FR 39794, June 12, 1980; 46 FR 60181, Dec. 9, 1981; 50 FR 45751, Nov. 1, 1985]

§ 1872.5 Subordination of FmHA real estate mortgages to easements to the Bureau of Sport Fisheries and Wildlife.

(a) *General.* The policies and procedures for subordinating FmHA mortgages on wetlands on which the Bureau of Sport Fisheries and Wildlife obtain easements for waterfowl nesting habitats are set forth herein. Appendix I "Memorandum of Understanding Between Bureau of Sport Fisheries and Wildlife and the Farmers Home Administration," outlines the procedure to follow in processing of such subordinations.

(b) *Authorization.* When a request for a subordination is received from the Bureau of Sport Fisheries and Wildlife, the County Supervisor will handle the request in accordance with the steps outlined in Appendix I and applicable portions of § 1872.3.

§ 1872.6 Subordination of FmHA's lien to the Commodity Credit Corporation's (CCC's) security interest taken for loans for farm storage and drying equipment.

The CCC makes loans under its Farm Storage and Drying Equipment Loan Program for the purchase, construction, erection, remodeling, or installation of either farm storage or drying equipment or both and requires that a loan of $10,000 or more, or any loan at the discretion of the approving committee, be secured by a lien on the real estate. When the CCC proposes to make a loan to an FmHA borrower and requests a subordination of the FmHA real estate lien, the request will be handled on an individual case basis in accordance with the authorizations and requirements of § 1872.3 of this subpart. A borrower's request for the FmHA's consent to severance agreement or other similar instrument for an item or items to be acquired with a CCC loan will be handled in accordance with § 1872.10 of this subpart.

§ 1872.7 Consent to junior liens.

(a) *Policy.* As a general policy, FmHA borrowers will be discouraged from giving junior liens on real estate securing an FmHA loan to other creditors. When consent is requested by a borrower, the County Supervisor may consent by executing Form FmHA 465-1 or other form approved by OGC for use in the state provided: The loan is necessary for the successful operation of the borrower's security property or because of his financial condition; the terms of the junior lien debt are such that its payment will not likely jeopardize payment of the FmHA loan; any operating plans made with the junior lienholder are consistent with any plans made by the FmHA with the borrower; and the junior creditor agrees in writing that he will not foreclose his mortgage before a discussion with the County Supervisor and after giving a reasonable specified period of notice to the FmHA.

(b) *Servicing action.* When a junior lien is placed on any property without FmHA's consent, and consent may not be granted in accordance with the policy indicated in § 1872.7(a), the FmHA may continue with the loan as long as the borrower makes payments on FmHA loans as agreed, properly maintains the security, and meets all other conditions of the loan. The County Supervisor will continue to service the loan to protect the Government's security interest.

§ 1872.8 Consent to borrower's granting lease of security.

When consent to a lease is required by the security instruments and a borrower requests FmHA's consent to lease all or a portion of the security, or the County Supervisor discovers that a borrower is leasing the security without consent, Form FmHA 465-1 will be prepared when the County Supervisor recommends approval of the lease. That form will show the terms of the proposed lease and will specify the use of proceeds including any proceeds to be released to the borrower. When another lienholder's mortgage requires consent to lease, this consent will be obtained as provided in § 1872.1(f) of this subpart. FmHA consent to the lease may be granted on the basis of the situation at the time of the proposed action when: the lease or its terms will not adversely affect the repayment of the loan or the Government's rights under the mortgage, leasing is not an alternative to, or means of, delaying liquidation action, the operation of all or a portion of the security under the lease will not adversely affect any applicable crop allotments, the lease and use of any proceeds will further the objectives of the loan, liquidation is not pending and rental income sufficient to make regular payments under the note, pay taxes and insurance, and maintain the security assigned to FmHA for these purposes unless such payments are otherwise reasonably assured, the lease is advantageous to the borrower and is not to the Government's disadvantage, and if foreclosure action has been approved, consent to lease and use of proceeds will be granted only under directions by the OGC. In cases where the borrower leases property without consent and consent may not be granted in accordance with the above provisions, or when further approval of a lease cannot be granted in accordance with the conditions of the paragraph, the case will be serviced promptly in accordance with § 1872.17 of this subpart unless the borrower corrects the violation. If an NP loan is involved, § 1872.20(b) of this subpart also applies. Consent to lease will be subject to the additional conditions specified below for each kind of lease:

(a) *Leases of security for agricultural purposes*—(1) *County Supervisor's authority.* When liquidation in accordance with § 1872.17 is not pending, the County Supervisor is authorized to approve annual leases on all or part of the security for borrowers with:

(i) *RH Loans on farms, or SW or RL.* For the purpose of this paragraph, leases for an annual term with option to the lessor to renew for a longer term and to cancel at least at the end of each year will be considered annual leases. The FmHA will reserve the right to withdraw the consent at the end of any year should liquidation or other servicing action be required by FmHA.

(ii) *OL or FO loans.* OL or FO loans provided:

(A) Failure to personally operate the security to be leased is due to old age, poor health, or death in the family and the borrower or his family will continue to occupy the security as a home, or

(B) The part of the security to be leased is insignificant to total farm acreage and is surplus to the borrower's need, for example, a surplus building, wasteland, or a few acres of land inconveniently located or otherwise unsuitable and unnecessary for the successful operation of the farm by the borrower. This will also include the leasing of small allotment acreages that are not feasible for the borrower to operate because of special equipment needs, additional labor requirements, or other economical or management reasons. It must be determined that the leasing of these allotted acres will not reduce the borrower's operation to less than that of a family farm. This is not intended to cover substantial amounts of allotted crop acres that are an important part of the total farming operation. It must also be determined that the alloted acreage in question cannot be economically disposed of by the borrower in accordance with § 1872.4 and § 1872.9 of this subpart.

(2) *State Director's authority.* The State Director is authorized to approve leases when the following conditions exist:

(i) *Adverse conditions.* Failure to personally occupy as his home or operate EM, FO, or OL security is due to conditions beyond the borrower's control and it is determined that the borrower will reoccupy and resume personal operation of the property within a reasonable period of time generally not to exceed five (5) years.

(ii) *Pending liquidation.* Liquidation in accordance with § 1872.17 is pending and the lease is to protect the Government's interests. Form FmHA 465-2 will be used and the rental income will be applied to the FmHA secured debt as extra payments or to prior lien(s). However, when the value of the property is adequate to cover the secured debts and foreclosure action has not been approved, the proceeds may be applied on unsecured or undersecured FmHA debts.

(iii) *Time limit.* Consent is not granted for a period in excess of one year unless a lease with longer terms is determined to be in the best interest of the borrower and the Government. Any lease for a term of more than five (5) years will require prior concurrence of the National Office.

(3) *District Director's authority.* The District Director is authorized to approve leases on the same basis as the State Director provided consent is not given for more than four (4) years without further authorization from the State Office.

(b) *Lease of nonfarm tracts.* When a borrower who received an RH loan on a nonfarm tract no longer occupied the dwelling purchased, improved, or constructed and given as security for the RH loan, the loan will be serviced promptly for liquidation in accordance with § 1872.17, unless it is determined that the borrower vacated the dwelling for reasons beyond his control and intends personally to reoccupy the dwelling within a reasonable period usually not to exceed three (3) years.

(1) *County Supervisor's limit.* When it is determined that a borrower's request for permission to lease his RH security meets the conditions outlined above, the County Supervisor is authorized to approve the leasing for two (2) consecutive one-year periods.

(2) *District Director's limit.* When the borrower does not resume personal occupancy of the dwelling within two (2) years, the County Supervisor may submit the case file, Form FmHA 465-1, and his recommendations to the District Director who may consent to annual leasing for an additional two-year period or may require immediate liquidation. When the borrower is willing to voluntarily liquidate the account, or if foreclosure is contemplated, the District Director is authorized to approve the leasing pending liquidation. If the lease is for a term of more than one (1) month it will provide for cancellation by 30 days' notice.

(3) *State Director's authority.* Requests for leases exceeding the time limits above may be submitted to the State Director for consideration. However, any lease for a term of more than five (5) years will require the prior concurrence of the national office.

(c) *Leases of security under conditions other than specified in § 1872.8(a), (b), (d), or (e).* The State Director is authorized to grant consent to the lease of the security provided:

(1) *Conditions.* The lease is advantageous to the Government and the borrower and will not adversely affect the borrower's personal operation of the farm securing any FmHA loan or the occupancy of the dwelling by a borrower with an RH loan on a nonfarm tract, and the land or building to be leased is surplus to the borrower's needs.

(2) *Time limit.* Consent for lease is not granted for more than five (5) years without prior approval of the National Office. In any such case recommended by the State Director, the County Office case file, the justification for a lease for a longer period of time, and the reasons why a lease is preferable to disposition of the property will be sent to the National Office for consideration.

(d) *Mineral leases.* The County Supervisor, unless restricted by a State Supplement, or liquidation is pending, and the State Director in any case, are each authorized to consent on behalf of the Government and to execute recordable forms and such other forms as may be necessary, under the following conditions:

(1) *Compensation damages.* The lessee agrees in the lease or elsewhere, or is liable without any agreement, to pay adequate compensation for any damage to the real estate surface, improvements, and growing crops. When an oil and gas lease provides for payment of damage to growing crops and contains other provisions which are generally included in so-called "standard" lease forms that are used in the area, the State Director may determine that it will not be necessary to obtain any additional agreement for payment of damages if the value of the security likely will not be lessened. Damage compensation will be assigned to the FmHA by the use of Form FmHA 443-16, "Assignment of Income from Real Estate Security," or to the prior lienholder. However, the crop damage payment liability requirement may be omitted or deleted from the lease on small nonfarm tract cases.

(2) *Assignments.* Royalty payments are adequate and are assigned on Form FmHA 443-16.

(3) *Lease amount.* The bonus and rentals are at least equal to any minimum amounts established by a State Supplement. All or a portion of delay rentals and bonus payments may be assigned on Form FmHA 433-16 if needed for protection of the Government's interests.

(4) *Lease forms.* The lease, subordination, or consent form is prepared by

or is acceptable to the OGC. If standard lease forms are acceptable, the use of such forms may be authorized in a State Supplement.

(e) *Naval stores leases.* The County Supervisor, unless liquidation is pending, and the State Director in any case, are each authorized to execute Form FmHA 465-1 giving FmHA consent to the lease of naval stores and to execute such other forms on behalf of the FmHA as may be necessary. No lease may be consented to unless it requires operation consistent with approved naval stores practices in the community and any State Supplement on this subject. When naval stores are not managed or operated by the borrower, an assignment of the proceeds will be taken on Form FmHA 443-16.

[40 FR 15066, Apr. 4, 1975, as amended at 50 FR 45751, Nov. 1, 1985]

§ 1872.9 Transfer of upland cotton, peanut or tobacco allotments.

(a) *General.* Agricultural Stabilization and Conservation Service (ASCS) regulations pursuant to approved legislation permits the transfer of upland cotton, peanut, or tobacco allotments by one or more of the following transactions: Sale, lease, or transfer by the owner to another farm owned or controlled by him. These regulations require, among other things, that no allotment may be transferred from a farm which is subject to a mortgage or other lien, unless the transfer is agreed to by the lienholders. It is the policy of the FmHA to approve the transfer of any crop allotments permitted by the ASCS regulations if the conditions and requirements of this subpart can be met. FmHA personnel should familiarize themselves with the state ASCS policies and requirements concerning the sale, lease, or transfer of allotments to assure compliance with established FmHA policies and servicing of security.

(b) *Authorization.* The County Supervisor is authorized to approve a transfer of upland cotton, peanut, or tobacco allotment by execution of a completed Form FmHA 465-1. He is also authorized to execute the lienholder or mortgagee agreement on appropriate ASCS forms provided for this purpose for those cases in which he approves a transfer.

(c) *Transfer by sale.* Crop allotments enhance the value of a farm mortgaged to the FmHA and constitute basic security for the FmHA loan. Accordingly, when a borrower whose farm is mortgaged to the FmHA inquires about the sale of any of his allotted acres or requests the FmHA to sign the required lienholder or mortgagee agreement, the request will be treated the same as for a sale of a portion of the security and approval of the sale can be granted only in accordance with the applicable conditions and requirements of § 1872.4 of this subpart. The sale proceeds may be used only as authorized in that subpart after obtaining the concurrence of the employee authorized to permit use of the proceeds for other than application on the secured debt.

(d) *Transfer of allotment by lease.* The County Supervisor's authority to approve a lease of all or a portion of an allotment for a one-year period is contingent upon compliance with the policy outlined in the introductory statement of § 1872.8, except that the third example of item when FmHA consent may be granted will not be applicable. If the one-year lease is approved, the lease proceeds may be used as normal income. Leases for a period of more than one (1) year will be granted only with the concurrence of the District Director. When a lease is for more than one (1) year, an assignment of the rental proceeds should be obtained for application on the appropriate FmHA debt in accordance with the distribution formula for regular payments as outlined in § 1951.9 of this chapter.

(e) *Transfer of allotment by owner to other land owned or controlled by him.* A transfer by an owner to land owned or controlled by him is normally interpreted by the ASCS as a permanent transfer and can be avoided only by stipulating in the mortgagee approval that the transfer is to be considered as a lease for the appropriate number of years. This type of transfer will be approved only as a lease under conditions outlined in § 1872.9(d) to assure that the crop allotment on the security is not adversely affected.

[40 FR 15066, Apr. 4, 1975, as amended at 44 FR 46251, Aug. 7, 1979]

§ 1872.10 Severance agreements.

When a borrower requests the FmHA's consent to a severance agreement or other instrument of similar effect under which an item or items to be acquired by him through other credit will not become a part of the real estate securing the FmHA debt, such as a silo, storage bin, bulk milk tank, irrigation or a nonfarm enterprise facility or recreational equipment, or other income-producing facilities, and such equipment or facilities will be subject to a chattel lien, Form FmHA 465-1 will be completed. The County Supervisor, if the value of the item does not exceed $25,000, the District Director, if the value of the item does not exceed $50,000, and the State Director in any case, are each authorized to give FmHA consent by executing Form FmHA 465-1 and any necessary severance agreements provided the following determination are made: The financing arrangements are sound and proper, the transaction will not adversely affect the FmHA's security position and will be within the borrower's debt-paying ability, and the facility is not in excess of the borrower's needs, is modest in cost and design, and is otherwise in line with FmHA financing policies. In any case in excess of the County Supervisor's approval authority, the County Supervisor will forward to the District Director the Form FmHA 465-1, the borrower's case file, and his recommendations regarding the request. The OGC will be requested to approve a severance agreement submitted by the borrower not previously approved for use in the State and, when necessary, issue closing instructions. The State Director may request the OGC to prepare a severance agreement instrument for use in the State.

§ 1872.11 Disposition of proceeds of partial release, subordination, and consent transactions.

(a) *Payment on FmHA account or prior lien or use for development or enlargement.* Proceeds from the sale of a portion of the security, the granting of an easement or right-of-way, proceeds from leases referred to in § 1872.8(a)(2)(ii), royalties and damage compensation payments except for compensation for damages for growing crops, the sale of timber that clearly depletes the Government's security, other than that harvested on a selective cutting basis as authorized in § 1872.11(b), naval stores production not managed by or under the supervision of the borrower, and all similar transactions will be either released for payment on the prior lien, applied as an extra payment on the FmHA loan as provided in Subpart A of Part 1930 of this chapter, used for replacement or repair of damages for which compensation was paid, or used as provided in § 1872.4(c)(2) and § 1872.4(d) of this subpart.

(b) *Normal income.* Proceeds from leases authorized in § 1872.8, except lease proceeds referred to in § 1872.8(a)(2)(ii), bonuses and rentals under mineral leases, proceeds from the sale of timber that is harvested on a selective cutting basis that does not deplete the Government's security, or from naval stores production managed by or under the supervision of the borrower, compensation to the borrower for growing crops, labor, or services in cutting, loading, and hauling of security, and all similar transactions will be considered as normal income and may be used for the same purposes as for normal income security as outlined in Part 1962, Subpart A of this chapter. When forestry products income is received by the borrower, even though it is considered normal income, the County Supervisor must determine that amount of such proceeds that may be released to the borrower. In making such a determination, protection of the Government's security position must be fully considered in light of the amount of forest resources remaining, the unpaid balance of the loan, and any other debts owed the FmHA.

(c) *Assignment.* Any proceeds to be paid to the FmHA subsequent to the time of closing the transaction and not otherwise assigned or made payable to the FmHA will be assigned by the use of Form FmHA 443-16 or other assignment form approved by the OGC.

[40 FR 15066, Apr. 4, 1975, as amended at 42 FR 44696, Sept. 6, 1977; 44 FR 4437, Jan. 22, 1979]

§ 1872.12 Assignment and release of soil bank or similar program payments.

The County Supervisor may take an assignment on income to be received under a Soil Bank or similar contract to protect the financial interest of the Government or to facilitate loan servicing. The assignment of all or a portion of the income from the assignment may be released to the borrower by the County Supervisor when not to the financial detriment of the Government, and payments due on all FmHA loans have been made from other income or the income is urgently needed to meet emergency or other justifiable uses.

§ 1872.13 Deceased borrower.

Deceased borrower cases will be handled in accordance with the policy outlined in Subpart A, Part 1962, Subchapter H of this chapter.

§ 1872.14 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled in accordance with the policy outlined in Part 1962, Subpart A of this chapter. The handling of bankruptcy cases varies from state to state. Therefore, the State Director will issue a state supplement for more specific guidance when it will expedite the handling of such cases.

[40 FR 15066, Apr. 4, 1975, as amended at 42 FR 44696, Sept. 6, 1977; 44 FR 4437, Jan. 22, 1979]

§ 1872.15 Servicing note-only cases.

Each loan made on a note-only basis without mortgage security will be serviced in a manner consistent with the best interests of the FmHA.

(a) *Sale of real property on which improvements were made with note-only FmHA funds.* Any loan evidenced only by an unsecured note will be collected by voluntary means at the time of the sale of the property, if possible. If such collection is not possible, the loan may be assumed by the purchaser of the property on the terms of the note if such assumption is determined to be in the FmHA's best financial interest. If such collection or assumption cannot be effected, consideration should be given to settling the account in accordance with Part 1864, Subchapter E of this chapter, if it is eligible, obtaining judgment, or classifying it as collection-only. In case of a judgment sale, the State Director with the advice of the OGC and the U.S. Attorney will authorize an employee to attend the sale and, if appropriate, enter a bid on behalf of the Government in accordance with § 1955.15(f)(5) and (6) of Subpart A of Part 1955 of this chapter.

(b) *Assumption of note-only when real property securing another FmHA loan is involved.* When a borrower has an FmHA loan secured by real estate, and another FmHA loan evidenced only by a note, and the entire secured real estate debt is to be assumed, all or a part of the unsecured note up to the present market value of the property in excess of existing liens must be assumed as appropriate under § 1872.18 of this subpart, if approval of assumption of the secured note and transfer of the real estate is approved. If the entire note-only account is assumed, it may be assumed by use of Form FmHA 460-9, "Assumption Agreement (Same Terms-Eligible Transferee)," in accordance with the terms of the existing note. Otherwise, it may be assumed by use of Form FmHA 460-5, "Assumption Agreement (New Terms)," by an applicant who meets the eligibility requirements for the type of loan involved and on terms applicable to such a loan. Form FmHA 460-5 or Form FmHA 460-9 will be modified as appropriate, with the advice of OGC. The loan approval official may require a note-only loan being assumed to be secured by obtaining a new mortgage.

(c) *Deceased borrower cases.* When a borrower dies while owing an FmHA unsecured note, the case will be handled in accordance with the applicable policies in Part 1962, Subpart A of this chapter. If it is determined that there are no assets in the estate from which the claim can be collected and there are no survivors or others who will assume the account and continue to make payments on the note in accordance with its terms, the account will be settled immediately in accordance with Part 1864, Subchapter E of this chapter.

[40 FR 15066, Apr. 4, 1975, as amended at 41 FR 32577, Aug. 4, 1976; 42 FR 44696, Sept. 6, 1977; 44 FR 4437, Jan. 22, 1979; 50 FR 23901, June 7, 1985]

§ 1872.16 Release of FmHA mortgage without monetary consideration on basis of additional security or because of mutual mistake or nonexistence of evidence of indebtedness or valueless liens.

(a) *Additional real estate, chattel, or miscellaneous security.* Real estate, chattel, or miscellaneous items which were taken as additional security for a loan secured by real estate may be released by the State Director without consideration before the loan is paid in full, if the market value of the remaining security for the loan is clearly adequate to secure the unpaid balance of the loan. No part of the FO, RL, SW, EM, or RH farm or the borrower's dwelling for an EM, RH, FO, or RL loan is considered as additional security for this purpose. This subpart does not cover basic security for OL, and EM loans and only permits release of real estate for such loans, when it was taken as additional security. It must be determined that there is reasonable assurance that orderly payments can be made on the FmHA indebtedness and:

(1) *Release.* The release is needed to help finance the borrower's operations; or

(2) *Purposes.* The purposes for which the loan was made would be facilitated; or

(3) *Repayment.* The borrower's ability to repay the loan will be improved.

(b) *Release of real estate from mortgage because of mutual mistake.* Land or buildings included in the mortgage through mutual mistake, when substantiated by the factual situation, may be released from the mortgage by the State Director. The release is contingent on the State Director with the advice of the OGC determining that a mutual error existed at the time such property was included in the Government's mortgage.

(c) *No evidence of indebtedness.* The FmHA mortgage may be released by the County Supervisor in situations where there is no evidence of an existing indebtedness secured by the mortgage in the records of the FmHA County, State, or Finance Office.

(d) *Release of valueless liens.* State Directors are authorized to release FmHA mortgages or other liens which have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This authority does not extend to valueless judgment liens or valueless statutory redemption rights except with the consent of the OGC. The following will be obtained:

(1) *Appraisal report.* A market value appraisal report on the security prepared by an FmHA employee authorized to make appraisals.

(2) *Lienholders.* The names of the holders of prior liens on the property and the amount secured by each lien which is prior to the FmHA. Such information will be recorded in the running case record of the borrower's County Office case folder and submitted to the State Director for his review.

§ 1872.17 Liquidation action.

(a) *Voluntary Liquidation.* When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be told that liquidation can be accomplished by: (1) selling the security under paragraph (e) of this section, (2) transferring the security under § 1872.18 of this subpart, (3) conveying the security to the Government under Subpart A of Part 1955 of this chapter, or (4) refinancing the FmHA debt with another lender. The provisions of these regulations will be explained to the borrower. If the property is to be sold or transferred for its present market value which is less than the total secured debts against it, the County Supervisor will appraise the property immediately. If the unpaid FmHA secured debt and any prior lien do not exceed $100,000, the County Supervisor will establish the present market value of the security. Otherwise, the County Supervisor will obtain the concurrence of the District Director if the secured debt is less than $160,000 and the concurrence of the State Director if the secured debt exceeds $160,000.

(b) *Involuntary liquidation.* When the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under policy stated in § 1872.1(b) of this subpart, liquidation of the account(s) will be accomplished as expeditiously as possible. In farmer program cases, borrowers must receive Form FmHA 1924-14, "Notice-Farmer Program Servicing Options Including Deferrals and Borrower Responsibilities," Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," and Form FmHA 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," and any appeal must be concluded before any of the following actions can be taken. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

(1) *General.* After the borrower is told that FmHA wants the account liquidated, if the borrower is willing to voluntarily liquidate the account immediately by (i) selling the security under paragraph (e) of this section, (ii) transferring the security under § 1872.18 of this subpart, (iii) conveying the security to the government under Subpart A of Part 1955 of this chapter, or (iv) refinancing the FmHA debt with another lender, the borrower is allowed 120 days to accomplish such action after the borrower has indicated the action to be taken on Form FmHA 1924-26 and has returned the form to the County Supervisor. If the property is to be sold or transferred for its present market value which is less than the total secured debts against it, the County Supervisor will appraise the property immediately. If the unpaid FmHA secured debt and any prior lien do not exceed $100,000, the County Supervisor will establish the present market value of the security. Otherwise, the County Supervisor will obtain the concurrence of the District Director if the secured debt is less than $160,000 and the concurrence of the State Director if the secured debts exceeds $160,000.

(2) *Problem Case Report.* If the borrower is unwilling to take any of the actions specified in paragraph (b)(1) of this section or fails to carry out any such actions within the time set out in that paragraph, the County Supervisor will complete Form FmHA 1955-2 and submit it according to § 1955.15 of Subpart A of Part 1955 of this chapter.

(3) *Acceleration of account.* When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable portion of § 1955.15 of Subpart A of Part 1955 of this chapter.

(4) *Voluntary liquidation after acceleration.* Granting time for voluntary liquidation after acceleration is not authorized for farmer program loan accounts.

(5) *Multiple loans and loans secured by both real estate and chattels.* When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purposes of other FmHA loans, all FmHA loans should be liquidated. If a borrower has a loan(s) secured only by real estate and other loan(s) secured only by chattels or if a borrower has a loan(s) secured by both real estate and chattels, liquidation of real estate and chattel security will be started at the same time. Chattel security will be liquidated under Subpart A or Part 1962 of this chapter, except that when an account(s) secured by chattels only or by both chattels and real estate will be transferred, such transfer(s) will be accomplished in accordance with § 1872.18 of this subpart. When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan, the nonfarmer program loan will be accelerated at the same time the borrower is sent Form FmHA 1924-25.

(c) *Operation of the security or personal occupancy.* A borrower with farmer program loan(s) who without FmHA's consent does not personally operate the farm or recreational facility is violating agreements with FmHA. After complying with the requirements of paragraph (b) of this section pertaining to notices and appeals, such a borrower's account will be accelerated in accordance with § 1955.15(d)(2) of Subpart A of Part 1955 of this chapter, based on the failure to operate.

(d) *Accelerated repayment agreement.* When liquidation of the account is necessary because of failure to refinance or for other reasons and the remaining loan repayment period exceeds ten years for real estate loans or two years for OL and EM loans, the State Director may, in-lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. Farmer program loan borrowers must be sent Form FmHA 1924-14 before an accelerated repayment agreement is signed. For real estate loans other than RH loans on nonfarm tracts, the term of the agreement will not exceed ten years. For OL, EM, and RH nonfarm loans, the terms of the agreement will not exceed five years. In either case, the balance of the debt will be scheduled for repayment in equal annual or monthly amortized installments of combined principal and interest, except that, if annual payments are required, the first installment may be less than a full amortized installment if it is due substantially less than a full year after the date of the agreement and the borrower will not be able to pay the full amount. Interest will be at the rate shown in the note. The State Director will determine that authorization for repayment of the debt under an accelerated repayment agreement is necessary to protect the Government's financial interest and (1) the borrower can reasonably be expected to meet the accelerated payments, and (2) the borrower will continue to comply with other requirements of the loans and security instruments. When an understanding is reached with the borrower, Form FmHA 1965-11, "Accelerated Repayment Agreement," will be completed and executed. Separate Forms FmHA 1965-11 will be used for each type of loan and for direct or insured loans. If the borrower fails to meet any installment when due as provided in such an agreement, foreclosure action will be initiated and accounts accelerated in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter.

(e) *Cash sale.* Before any cash sale takes place, farmer program loan borrowers must be sent Form FmHA 1924-14. If a cash sale of mortgaged real estate would result in less than full payment of secured debts, the County Supervisor is authorized in accordance with § 1872.17(a) of this subpart to approve the sale at not less than the present market value of the property and to release the Government's liens, provided:

(1) Substantial recovery. A substantial recovery can be made on the FmHA secured indebtedness based on a recent appraisal report showing the present market value of the property.

(2) Application. All the proceeds are applied on the mortage debts in accordance with their respective priorities except authorized costs as specified in § 1872.4(c)(2) of this subpart.

(3) Release. The FmHA liens are not released by the County Supervisor until receipt of the appropriate sale proceeds for application on the Government's claim. The release will be made on forms approved or prepared by OGC. If is appears the debt will not be paid in full, the borrower will be sent Form FmHA 455-3, "Agreement for Sale by Borrower (Chattels and/or Real Estate)," and the debt will be considered for debt settlement. The case will be reclassified to "collection-only" when a judgment will not be obtained and if the debt cannot be settled, and if the requirements of FmHA Instruction 404.1 (available in any FmHA office) concerning, "Case Classifications," can be met. When a cause is reclassified to collection-only, Form FmHA 404-1, "Case Reclassification" and Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," will be sent to the Finance Office.

(f) *Environmental requirements.* Any applicable requirements of Subpart G or Part 1940 of this chapter must be met.

[50 FR 45751, Nov. 1, 1985]

§ 1872.18 Transfer of real estate security.

When the mortages requires the consent of the FmHA to any proposed sale or other transfer of real estate security for FmHA loans, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farmer program loan borrowers must be sent Form FmHA 1924-14 within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If the proposed sale would not result in the FmHA account being paid in full at the time of the sale, the County Supervisor should explain thoroughly the requirements of this section and §§ 1872.4 or 1872.17 of this subpart, as appropriate. When the transferor is receiving a substantial downpayment in connection with the sale of the property, the purchaser should be required to contact other sources of credit to secure a loan for repayment of the FmHA loan in full. If an NP loan is involved, § 1972.20(b)(5) of his subpart also applies. When real estate security, including water rights, is sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate paragraphs of this subpart, the account will be liquidated as required in § 1872.17 of this subpart.

(a) *Authority.* County Supervisors, District Directors, and State Directors are authorized to approve transfers with assumption of FmHA accounts to eligible or ineligible transferees in accordance with § 1872.18 and release of liability when the secured debts do not exceed $100,000, $160,000, and $225,000 respectively. State Directors also are authorized to approve such transfers to and assumptions by ineligible transferees regardless of the amount of the outstanding FmHA debts or the amount of prior liens. Proposed transfers to, and assumptions by, eligible transferees which will exceed the authorizations and limitation of the State Director for an initial or subsequent loan of the same type, will be submitted to the National Office for prior authorization for approval.

(b) *General policies.* The following general policies will be applicable when an FmHA borrower transfers or proposes to transfer real estate which is security for an FmHA loan(s) and the loan account(s) is to be assumed by use of either Form FmHA 460-9 or Form FmHA 460-5.

(1) *Agreement.* Form FmHA 465-5, "Transfer of Real Estate Security," will be completed to reflect the agreement between the transferor and the transferee. This agreement will not be completed for farmer program loan borrowers until the borrower has received Form FmHA 1924-14.

(2) *Assignment.* If an insured loan is involved, when applicable, the Finance Office will have the insured not assigned to the fund when the assumption agreement changes the terms of the note.

(3) *Value.* All transfers will be based on present market value. When the total secured FmHA debt(s) exceeds the present market value, the transferee will assume an amount equal to the present market value as determined in accordance with § 1872.1(a), less prior liens. Otherwise, the transferee will assume the total FmHA secured debt(s).

(4) *Assumption agreement.* Notwithstanding that part of § 1807.2(f)(8) regarding the effect of a wife's signature on a promissory note, a deceased borrower's spouse will execute an assumption agreement when the spouse is not already liable for the indebtedness because of not having signed the note(s) or would be absolved from liability under State law after having signed the note(s). The assumption agreement, when required in such cases, will be completed and sent to the Finance Office. The interest rate and terms of the assumption agreement of such a spouse usually will remain the same as they were in the note(s). If, however, the number of years over which a note was amortized needs to be extended to be within the repayment ability of the assuming spouse, the reamortization period may be extended but cannot exceed the repayment period applicable to the kind of

loan being assumed calculated from the date of the original note. Authorization to continue the loan at the interest rate and terms authorized by this paragraph are contingent on a determination by the approval official that such rates and terms are necessary to carry out the purpose of the loan, or to protect the financial interest of the Government.

(5) *Withdrawal of joint borrowers.* When one of the joint borrowers (including the jointly liable former spouse of a divorced borrower) withdraws from the operation and conveys his interest in the security property to the remaining borrower who desires to assume the total indebtedness, the assumption, except for RH loans, will be made on the basis of the existing note(s) by use of Form FmHA 460-9 or, in case of an ineligible transferee, on Form FmHA 460-5 on terms applicable to ineligible applicants. For RH loans, an assumption agreement is not required. However, Form FmHA 450-10 will be submitted to the Finance Office when the account will be continued with the remaining borrower(s) under a different name. In either case, the former spouse or previous joint owner will be released of liability for the indebtedness if the conditions of § 1872.18(f) are met, except when a divorce decree awarded the security property to one spouse would be responsible for paying all or part of the mortgage payments.

(6) *Assumption with joint borrower.* When the spouse or another member of a borrower's family who is eligible for the kind of loan involved will assume the indebtedness with one or more of the existing borrowers, the assumption will be made on the same basis as the existing note(s) by use of Form FmHA 460-9. Such assumptions are frequently made in accordance with all or the applicable requirements of this § 1872.18 when an aged couple has a son or daughter who will assist in operating the farm or live in the RH house, help make the payments, and obtain title to the property individually or jointly with the borrower(s), or subject to a life estate reservation by the existing borrower(s).

(7) *Loan type.* The kind(s) of loan will remain the same for all loans except that loans which are transferred to ineligible applicants will be classified as Non Program Loans (NP).

(8) *Transfer of a portion of the security.* Generally, title to all FmHA real estate security, including water rights, must be conveyed to the transferee not later than the date of closing the transfer. However, a transfer of a portion of the FmHA real estate security with an assumption of the total indebtedness may be approved, provided: (i) The portion of the FmHA security transferred has a present market value at least equal to the total indebtedness owed by the borrower of such indebtedness is reduced by a cash payment to the present market value of such property, (ii) the transaction is advantageous to the Government, and (iii) in the case of RH loans, the property improved with RH funds is conveyed to the person assuming the RH loan. In such a transaction, the security retained by the transferor will be released from the Government's lien.

(9) *Multiple sales and assumption.* When a request is made by a borrower to transfer the real estate security as parcels to two or more transferees with assumption of a portion of the debt, the County Supervisor may send the proposed action to the State Director for consideration if the County Supervisor recommends that such a transaction would be advantageous to the Government. In such a case, the total debt must be assumed by the transferee even though a portion of the security property may be retained by the transferor. The County Supervisor will submit to the State Director the complete factual information concerning the transaction. It will include appraisal reports showing the present market value of each portion to be transferred and such value of the total unit before subdivision, the amount of indebtedness to be assumed by each transferee, and the case file with other pertinent information outlining the reasons for the proposed actions.

(10) *Dual security.* When the account(s) is secured by both chattel and real estate, all the chattel security must be transferred, sold, or liquidated by the time of the transfer or the real

estate, except that in case of EM or SL security, the real estate security may be transferred without transfer or liquidation of the chattel security upon prior approval of the National Office.

(11) *Consent.* The written consent of any lienholder must be obtained if required.

(12) *Junior liens.* When the full amount of the FmHA debts assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA liens being assumed unless the State Director determines that such liens, judgments, or claims will not adversely affect the Government's security interest and that the transferee's ability to pay the FmHA debt will not be impaired thereby.

(13) *Restriction.* When less than the full amount of the FmHA debt is being assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA loans being assumed.

(14) *Loans.* An initial or subsequent loan for which the transferee is eligible may be made in connection with a transfer subject to the policies and procedures governing the kind of loan being made. When the transfer is being made to an eligible FO applicant, FO loan funds may be used to pay equity. When real estate security for an RH loan is transferred to a person eligible under Subpart A of Part 1944 of this chapter for an RH loan to purchase such real estate, RH loan funds may be used to pay the equity. This, however, does not include income-producing land or buildings. In lieu of the subsequent loan of the kind involved, the Government's lien may be subordinated to (i) enable the transferor to take a first mortgage to secure the amount of the equity payment, of (ii) to permit another lender to furnish the funds needed in connection with the transfer. In such cases, the subordination will be processed in accordance with the applicable provisions of § 1872.3 of this subpart. The transferor may convey title to the property by warranty deed or, when the transferor agrees to take a first lien to secure the downpayment, the property may be sold by purchase contract or similar instrument that meets the conditions or § 1943.16(a)(3) of Subpart A of Part 1943 of this chapter. In such cases, prior lienholders' agreements will be obtained in accordance with § 1807.2(f)(5) of Part 1807 of this chapter. When necessary to settle a divorce action, a subsequent loan may be made or a subordination may be granted to permit the remaining borrower to obtain a loan in an amount not to exceed the equity in the property.

(15) *Payments.* If a payment to the transferor is to be made in connection with the transfer, the total FmHA debt must be assumed unless the payment received by the transferor is applied on a prior lien or to the portion of the transferor's FmHA debt not assumed. When the full amount of the FmHA secured debt is being assumed and other FmHA debts owed by the transferor are not adequately secured, the State Director may, as a condition of approving the transfer, require that all or a part of any equity payment be applied on such debts.

(16) *Downpayment.* An eligible transferee will make a downpayment on the FmHA secured debts if he is financially able. When a payment is required the transfer will not be closed nor the appropriate assumption agreement executed prior to receipt of such payment.

(17) *Date.* The effective date of the transfer will be the actual date the transfer is closed. This is the date on which Forms FmHA 460-5 or 460-9 are signed. In connection with the use of either form, the unpaid principal balance and accrued interest will be shown in Table 1 and the accrued interest will be computed from Form FmHA 451-26, "Transaction Record," Form FmHA 451-31, "Borrower Transaction Record," or the monthly payment account Status Report. If Form FmHA 460-9 is used, the transferee will be informed of the amount of principal and interest owed. The transferee also will be advised of the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, the amount of interest, if any, that accrued during a deferral

period and any accounts that must be paid to bring any monthly payments up to date.

(18) *Civil Rights Acts.* "When the property transferred will continue to be used for the same or a similar purpose for which federal financial assistance was extended, except for property involving only one or more of the following programs: FO and OL loans for farm purposes: RH 502, 504, and 523 Self Help loans; and EO, SW, and EM loans to individuals; the transferee will sign a Form FmHA 400-4, 'Nondiscrimination Agreement.' "

(19) *Environmental requirements.* Applicable provisions of Subpart G of Part 1940 of this chapter must be met.

(c) *Transfer of loans to eligible applicants.*(1) *Eligibility.* A loan may be transferred to an applicant who meets the eligibility requirements for the kind of loan being assumed or whose situation after the transfer will satisfy such eligibility requirements. Loans may also be transferred under the following conditions:

(i) *RH loan.* An RH loan to a person of low or moderate income may be transferred to a person whose income is above moderate and who meets the other requirements of an eligible transferee. However, preference will be given to low- or moderate-income applicants who have indicated an interest in buying the property. An above-moderate loan may be transferred to an applicant whose income may not be in the above-moderate category provided his income is sufficient to meet the terms of the loan. Such a loan, after the transfer, will continue to be classified as above moderate. An RH loan may be transferred to an applicant who meets the eligibility requirements for an RH loan, notwithstanding the fact that the property is located in an area the designation of which has changed from rural to nonrural.

(ii) *ORE loan.* An ORE loan may be transferred to an applicant who meets the eligiblity requirements for an FO loan, or to an applicant who meets the eligibility requirements for an RH loan if it is a nonfarm tract and was security for an RH loan originally.

(iii) *SL and other emergency-type loans.* SL and other emergency-type loans no longer being made may be transferred to an applicant who meets current EM loan requirements.

(iv) *Other loans.* Any other type of loan for which there are no present authorizations or eligibility requirements may be transferred only with the advice of the National Office after considering the recommendations of the State Director or reviewing the case file.

(2) *Repayment and reamortization terms*—(i) Form FmHA 460-9. Except as noted below for RH loans, assumption of any FmHA loan may be approved without any change in the balance owed, interest rate, or other terms. In such cases, Form FmHA 460-9 will be used. A loan may be transferred even though it is on schedule, ahead of schedule, or behind schedule. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA debt to be assumed is within the debt paying ability of the transferee. If the transferor received a loan deferral under § 1951.44 of Subpart A of Part 1951 of this chapter, the interest that accrued during the deferral period must be paid by the time the transfer takes place, or such interest will be added to the loan principal and the loan must be placed on new rates and terms by using Form FmHA 460-5.

(A) Rural Housing Disaster (RHD) loans will be transferred at the current rate for Section 502 loans unless the transferee is eligible for a RHD loan.

(B) Direct Sections 502, 503, and direct Senior Citizen RH loans will be transferred at the current rate for Section 502 loans.

(C) Low and moderate RH loans transferred to a person having an above-moderate income will be transferred at the current rate for an above-moderate Section 502 loan.

(ii) *Form FmHA 460-5.* If an extension of the existing loan repayment period is necessary to enable the transferee to be successful, or if interest accrued during a deferral period is not paid in full at the time of transfer, Form FmHA 460-5 will be used. The new repayment period will not exceed the repayment period for a new loan of the type involved; for example, FO—40 years, OL—7 years, and RH—33 years. If a new repayment period is used, the current interest rate for a new loan of the type involved will be used and any insurance charge applicable to such a loan will be provided for, except in assumptions by a surviving spouse under § 1872.13(b)(4). In determining the new repayment period and interest rate, (A) an NP loan will be considered an FO or RH loan as appropriate, if the applicant and the property meet the requirements of § 1872.18(c)(1), and (B) an SL or other emergency-type loans no longer being made will be considered an EM loan.

(d) *Transfer of loans to ineligible transferees.* When a borrower sells or proposes to sell the real estate security to a person(s) who is not eligible to assume the indebtedness in accordance with § 1872.18(c) and the mortgage requires the Government's consent for the transaction, it will be the policy to permit assumption of the account by the ineligible transferee if it is in the best interest of the FmHA. Otherwise, the account will be immediately liquidated. Ineligible transferees may include a farming corporation or a farming partnership but do not include other corporations or partnerships, real estate brokers, or financing institutions. For any type of loan for which there are no existing authorizations or eligibility requirements in FmHA Instructions, the loan may be transferred under the requirements and conditions of this subpart. If the approval official determines that it is in the best financial interest of the FmHA to transfer the account, he may consent to the transfer by assumption agreement provided:

(1) *Downpayment.* Each transferee is required to make as large a downpayment on the FmHA secured debt as he is financially able to make under the circumstances. However, no transfer to an ineligible applicant may be approved without at least ten (10) percent downpayment.

(2) *Terms—farm.* Except for RH loans on nonfarm tracts, the balance of the FmHA debt assumed is scheduled for repayment in not to exceed ten (10) years with amortized monthly or annual installments, and with interest to the borrower at the rate being charged for section 502 RH loans to moderate-income applicants at that time or at the rate of interest specified in the note being assumed, whichever is greater. When it has been definitely determined that a property cannot be transferred on terms of ten (10) years or less because of conditions in the area, the State Director may authorize a longer repayment term not to exceed fifteen (15) years. When the FmHA debt consists only of OL and EM operating type loans secured by real estate, the balance of the debt assumed will be scheduled for repayment in not more than five (5) years. In case of real estate loan transfers previously made on terms of not more than five (5) years and the borrower, because of crop failure, a natural disaster, or similar conditions beyond his control, is unable to meet the scheduled installments, an extension of the repayment period not to exceed a total of ten (10) years from the date of transfer may be authorized provided the County Committee and the State Director determine that the extended repayment period is necessary to prevent foreclosure action and the Government's interest will not be adversely affected. In such cases, the unpaid balance owed will be reamortized over the remaining period and the borrow-

er will execute a replacement assumption agreement evidencing the debt.

(3) *Term—nonfarm.* For RH loans secured by a lien on a nonfarm tract, the balance of the RH debt assumed will be scheduled for repayment in not more than ten years with amortized annual or monthly installments. Interest on the amount assumed will be charged at the Single Family Housing—Ineligible rate in effect when the transfer is approved or the interest rate specified in the note being assumed, whichever is greater.

(4) *Payment.* The transferee has ability to pay the FmHA debt in accordance with the assumption agreement and the legal capacity to enter into the contract.

(5) *County Committee.* The County Committee, except for Section 502 and 504 RH loans, finds that the transferee will honestly endeavor to make payments in accordance with the assumption agreements, maintain the security property, and carry out his other obligations in connection with the loan.

(6) *Condition.* The transfer will not adversely affect the FmHA program in the area.

(e) *Consent of FmHA not required to transfer.* Even in cases where the FmHA mortgage(s) does not require the Government's consent to the sale of the security, if the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with § 1872.18 (c) or (d), the Government will not consent to the sale.

(1) *Sections 502 and 504 RH loans.* In such cases, the County Supervisor will advise the State Director of the sale. If the account is delinquent or the loan is otherwise in default, the County Supervisor will also advise the State Director of the nature of the default, and any specific plans that may have been made to correct the default. If the State Director decides to continue with the account, it will be serviced in the name of the borrower and otherwise serviced in the usual manner.

(2) *Farmer program loans.* The borrows will be sent Form FmHA 1924-14.

(f) *Release of transferor from liability.* The policy of the FmHA is that the borrower (and any cosigner for an RH loan) will be released from personal liability to the FmHA when all of the real estate security for a loan is transferred under § 1872.18(c) or (d) and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. Borrowers, however, may not be released from personal liability to the FmHA when real estate securing loans is transferred to an ineligible transferee under § 1872.18(d) unless the debt assumed by the transferee is scheduled for repayment in not to exceed five (5) years from the date of the assumption agreement. Also, when the total outstanding debt is not assumed, the following conditions must be met:

(1) *Required certification*—(i) *Certificationby County Committee.* The County Committee, except for section 502 and 504 RH loans, must execute a memorandum containing the following statement:

> (Name of transferor and any cosigner) in our opinion do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of their ability. Therefore, we recommend that the transferor and any cosigner be released of personal liability upon the transferees' assumption of that portion of the indebtedness equal to the present market value of the security.

(ii) *Certification by loan approval official.* The official approving the transfer section 502 and 504 RH loans must execute a memorandum containing the statement provided for in § 1872.18(f) (1)(i) when County Committee action was not required to authorize release of the borrower from personal liability to the FmHA.

(2) *Release.* For an RH loan involving a cosigner, the transferor may be released from personal liability only if the cosigner also can be released.

(3) *Continued liability.* When an ineligible transferee assumes an FmHA loan, other than a section 502 and 504 RH loan, scheduled for repayment in more than five (5) years from the date of the assumption agreement, the

transferor must indicate that he will continue to be liable for the debt by signing an agreement as follows:

CONTINUED LIABILITY AGREEMENT OF PRESENT DEBTORS

The undersigned hereby agree to remain personally liable for the indebtedness owed to the FmHA and assumed by ———— (assuming parties) under assumption agreement dated ——.

____

____

(Date) ——————————

(The original of the signed agreement will be attached to the original assumption agreement, a copy filed in the transferee's County Office case folder, and a copy provided the transferor.)

(4) When the total outstanding debt is not assumed, a farmer program loan borrower who is not being released from liability must be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in any FmHA office).

(g) *Processing transfer by assumption of indebtedness.* When the transfer is not within the County Supervisor's approval authority, the docket with the transferor's case file will be sent to the District Director or State Office, as appropriate, for approval or disapproval.

(1) *Refund of Unused Funds, Loan Funds Not Advanced, Transaction Record.* Unexpended funds in the supervised bank account will be applied as a refund unless FO, SW, RL, RH, or EM security is transferred to an eligible applicant and the funds are needed for completing planned development. Any obligation of or request for loan funds not yet advanced will be cancelled. Form FmHA 451-26, or the monthly payment account Status Report will be used to compute the unpaid balance due on the effective date of the transfer.

(2) *Preparation and distribution of transfer docket*—(i) *Checking docket forms.* When the transfer docket forms shown in § 1872.18(g)(2)(iii) have been completed, the approval official will determine that the proposed transfer conforms to the applicable procedural requirements, each form is prepared correctly in accordance with Forms Manual Insert or other appropriate subparts, and items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which such items appear.

(ii) *Information on the availability of other credit.* The County Supervisor will record in the running case record the pertinent information concerning the negotiations made by an eligible transferee and the discussion by FmHA personnel with the applicant's creditors and other lenders. The investigation and availability of other credit for eligible transferees will be documented as required for the kind of loan being assumed. This must be sufficiently clear and adequate to establish that other credit is not available to pay the debt in full and make the transfer unnecessary. Any letters from lenders or other evidence which may have been obtained indicating that the applicant is unable to obtain satisfactory credit elsewhere will be included in the loan docket.

(iii) *Distribution of transfer docket forms.* The following table will be used as a guide in distributing the necessary forms.

FmHA form No.	Name of form	Total number of copies	Signed by transferee	Transfer docket	Copy for transferee
*1940-1	Request for Obligation of Funds	3	2-O and C	2-O and C	1-C
400-4	Nondiscrimination Agreement	2	1-O	1-O	1-C
*410-1	Application for FmHA Services (with attachments)	*1	1-C	1-O	
*410-4	Application for Rural Housing Assistance (Non Farm Tract)	*1		1	
*1910-5	Request for Verification of Employment	1			
*465-5	Transfer of Real Estate Security	3	1-O	1-O	1-C
*440-2	County Committee Certification or Recommendation	1		1-O	

FmHA form No.	Name of form	Total number of copies	Signed by transferee	Transfer docket	Copy for transferee
*431-2[1]	Farm and Home Plan	1	1-O	1-C	in record book
*431-1	Long-Time Farm and Home Plan	2	2-O and C	1-C	1-O
*431-3[1]	Household Financial Statement and Budget	2	1-O	1-C	1-O
*431-4[1]	Business Analysis-Nonagricultural Enterprise	2	2-O and C	1-C	1-O
*422-1	Appraisal Report (Farm Tract)	1		1-O	
*422-3	Map of Property	1		1-O	
*1922-8	Residential Appraisal Report	1		1-O	
*1940-21	Environmental Assessment for Class I Actions	1		1-O	
*1940-22	Environmental Checklist for Categorical Exculsions	1		1-O	
*424-1	Development Plan	2	1-O	2-O and C	1-C
*426-1	Valuation of Building	1		1-O	1-C
*440-9	Supplementary Payment Agreement	2	1-O	2-O and C	1-C
*460-5[7]	Assumption Agreement (New Terms)	4	1-O	1-O	1-C
*460-9[8]	Assumption Agreement (Same Terms-Eligible Transferee)	4	1-O	1-O	1-C
*465-8[5]	Release From Personal Liability	2		1-C	1-C
*443-17	Agreement to Sell Nonessential Real Estate	2	2-O and C	1-C	1-C
*1924-14	Notice-Farmer Program Servicing Options Including Deferrals and Borrower Responsibilities	2		1-C	1-C
*1924-25	Notice of Intent to Take Adverse Action	2		1-C	1-O
*1924-26	Borrower Acknowledgement of Notice to Take Adverse Action	1		1-O	
*1940-41[3]	Truth in Lending Disclosure Statement	2	1-C	1-C	1-O
*1940-43[4]	Notice of Right to Cancel	3	1[4]	[4]1	2-O and C
*451-10	Request for Statement of Account	3		2-O and C (O to FC)	
*451-25	Status of Account	2		2-O and C	
*1960-6	Assumption Agreement	1[9]	1-C	-	
*1965-22	Information on Assumption on New Terms or Other Change of Terms	2		1-O	
*1965-23	Supplemental Information on Assumption and/or Change of Terms	2		1-O	

O—Original; C—Copy.

*—When applicable.

[1] In addition to plan for first full year, interim plan, if prepared, will be included in the docket.

[2] The original Form will not be executed until date of closing the transfer.

[3] In right to cancel cases, original and sufficient copies for each person who has right to cancel in accordance with Subpart I of Part 1940 of this chapter.

[4] Original and one copy to transferee, two copies to each other person who has right to cancel in accordance with Subpart I of Part 1940 of this chapter. If the person exercises the right to cancel, he/she will sign one copy of the form and return it to the County Office.

[5] When requested, prepare an additional copy for delivery to transferor.

[6] Applicant must sign and date this form unless a similar certification is obtained on the application form.

[7] For eligible transferees, delete the first sentence referring to other credit in item 34 of the form. The deletion will be initialed by the applicant.

[8] For ineligible transferees, delete the first sentence in the applicant's certification (item 23 on the Form FmHA 410-1 or item 12 on the Form FmHA 410-4) which refers to other credit. The deletion will be initialed by the applicant.

[9] Original to Finance Office.

(iv) *Other transfer docket items when applicable:* Other transfer docket items may include a mortgagee title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property to be taken as additional security, purchase contract or other instrument of ownership, and information on prior mortgage(s) and co-signer(s). When the County Supervisor is the approving official he/she may, in lieu of including the document evidencing ownership, include a statement in the docket indicating that he/she has seen and reviewed the document. When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making regulation.

(3) *Collections and receipts.* During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account and Form FmHA 451-26 will be forwarded to the County Office. This includes any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. When the County Supervisor has received a payment on the account which is not included in the latest transaction record or monthly payment account Status Report, he/she should deduct such amounts from the total amount of principal and interest calculated from the latest information available before completing the assumption agreement and having it signed.

(i) *Transaction record.* When the borrower has made a direct payment to the Finance Office and there is no record of the payment in the County Office, the account will be assumed on the basis of the latest record in the County Office. In such cases, the application of the direct payment will be reversed from the account and the assumption agreement will be processed in the Finance Office. The Director of the Finance Office will contact the County Supervisor to determine the disposition of the proceeds from the direct payment.

(ii) *Identification.* For payments received on the date of transfer, Form FmHA 451-2, "Schedule of Remittances," will be prepared to show "Transfer in process for account owned by (borrower's name and case number) to be transferred to (name of transferee and case number, if known)." If the borrower number portion of the case number has not yet been assigned for a transferee only the State and County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the assumption agreement showing the date of Form FmHA 451-2 and the amount paid.

(iii) *Payment.* When a payment is due on the assumption agreement shortly after the transfer is completed, such a payment should, if possible, be collected at the time of transfer and remitted in the name of the transferee.

(4) *Farm and home plans and financial statements.* When the transfer involves an ineligible transferee, Form FmHA 431-3 or Form FmHA 431-2 will be used with Tables A and J being completed in the same manner as for any other borrower but other tables and portions of the form will be completed only to the extent necessary to determine the debt-paying ability of the transferee and to give sufficient information for completing Table J. When a transfer is to be made for less than the amount of the indebtedness and a release of liability is involved, a current financial and income statement of transferor will be obtained on Form FmHA 431-3 or Form FmHA 431-2.

(5) *Appraisal report.* Form FmHA 422-1, FmHA 422-7, "Appraisal Report for Multiunit Housing," or FmHA 422-8 as appropriate will be obtained when (i) the amount to be assumed is less than the full amount of the indebtedness, (ii) required in connection with an initial or subsequent FO, RL, SW, RH, RRH, or LH loan to be processed with the transfer, or (iii) the loan approval official requests a current appraisal.

(6) *County Committee certification and recommendation.* The complete transfer docket, except for sections 502 and 504 RH loans, will be presented to the County Committee for review.

(i) *Applicants.* The transfer will be contingent upon the County Committee making its appropriate certification on Form FmHA 440-2 for an eligible applicant or when transfer is to an ineligible applicant, executing a memorandum containing the following statement:

> In our opinion, the transferee, ——————————(name of transferee), will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan.

(ii) *Release.* When the County Committee recommends a release of the transferor and any cosigner from liability when real estate security is being transferred under § 1872.18(c) or (d) with an assumption of less than the total debt, the provisions of § 1872.18(f)(1)(i) will be followed.

(7) *Property insurance.* The transferee will obtain property insurance in accordance with the requirement for the loan(s) involved. If the insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of new coverage by the transferee. The insurance company will be notified by the County Supervisor immediately after completion of the transfer. When the full amount of the FmHA indebtedness is being assumed and an insurance premium has been advanced to the account, the transfer will not be completed until the amount of the premium has been charged to the transferor's account.

(8) *Title clearance and legal services.* Title clearance and legal services for closing transfers will be accomplished in accordance with Part 1807 Subchapter A of this chapter in case of a transfer involving an FO, RL, RH, RRH loan to an individual, LH, or SW loan not coded J or a LCD loan. Where the original repayment terms are altered, it may be necessary to obtain a new mortgage from the transferee to continue FmHA's lien on the transferred real estate. The advice of OGC will be obtained on a State-by-State basis and implemented through State regulations to provide for such new mortgage where required, and to further provide instructions on whether the original mortgage should be released. Title clearance and legal services for the above loans change are not required when a joint borrower conveys his interest in the security to the remaining borrower who assumes the total indebtedness on the same terms provided a subsequent loan or subordination is not involved. For all other kinds of loans being transferred, title clearance and loan closing services will not be required unless the approval official, with the advice of the OGC, determines that such services are needed in order to maintain the FmHA's security position or for other reasons. If other than an FmHA mortgage is involved which requires the mortgagee's consent to the transfer, such consent will be obtained.

(9) *Assumption agreement, release from personal liability, receipts.* When the full amount of the debt is assumed or a release from personal liability is otherwise approved under this Subpart and all of the security is being transferred, Forms FmHA 460-5 or FmHA 460-9, FmHA 451-1, "Acknowledgement of Cash Payment," and FmHA 465-8 will be completed and executed simultaneously with the closing of the transaction.

(10) *Transfer of unused development funds.* Any remaining funds not to be refunded that are in the transferor's supervised bank account will be transferred to the eligible transferee's supervised bank account simultaneously with the closing of the transfer for use in completing planned development.

(11) *Nondiscrimination Agreement.* "When the property transferred will continue to be used for the same or similar purpose for which federal financial assistance was extended, except for property involving only one or more of the following programs: FO and OL loans for farm purposes; RH 502, 504, and 523 Self Help loans; and Economic Opportunity (EO), SW, and EM loans to individuals; the transferee will sign a Form FmHA 400-4.

(h) *Transfer not completed.* If for any reason the transfer is not completed, the Finance Office will be notified to resume servicing of the account in the name of the transferor.

(7 U.S.C. 1989; 5 U.S.C. 301; Sec. 10, Pub. L. 93-347, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

[40 FR 15066, Apr. 4, 1975, as amended at 41 FR 53010, Dec. 3, 1976; 45 FR 71761, Oct. 30, 1980; 46 FR 61989, Dec. 21, 1981; 48 FR 4, Jan. 3, 1983; 48 FR 52565, Nov. 21, 1983; 50 FR 16055, Apr. 24, 1985; 50 FR 16225, Apr. 25, 1985; 50 FR 39638, Sept. 30, 1985; 50 FR 45753, Nov. 1, 1985]

§ 1872.19 [Reserved]

§ 1872.20 Servicing non-program loans (NP).

(a) *Definition.* A non-program loan results when credits are extended to ineligible applicants and/or transferees in connection with sale of inventory properties and loan assumptions.

(b) *Servicing authorities.* (1) Except as set out in the following paragraphs, debtors to FmHA with NP loans are not eligible to receive any program benefits including supervision and servicing. Such benefits include limited resource interest rates, reamortization, rescheduling, consolidation, deferral, and appeal rights.

(2) Subordination of FmHA NP loan mortgages may be permitted to refinance, extend, reamortize, increase the amount of an existing prior lien, or to permit a prior lien *only* when the security for the NP loan is also the security for another FmHA Insured Farmer Program type loan and the request for the subordination meets all the requirements for the subordination of the other FmHA Insured Farmer Program type loan and is in the best interest of the government. Such actions can only be approved by the State Director.

(3) Any consent by partial release, subordination or other agreement involving road rights of way, gas line easements, utility line easements, mineral right easements or leases, other leases, etc. may be approved providing that the funds received are applied to the liens in order of priority. Such actions can only be approved by the State Director.

(4) Voluntary conveyance of security for NP loans will only be considered when it is clearly in the best interest of the government. The debtor will not be released from liability for any FmHA debt that exceeds the value of the security plus any additional cost which might result in a charge to the government such as closing cost and maintenance of the security property. Such actions can only be approved by the State Director.

(5) NP loans will be transferred to an FmHA applicant unless the security and the transferee meet the requirements for an OL or FO loan as applicable. In such cases the transfer will be processed the same as on the OL or FO loan being transferred to an eligible applicant. EM and EE loans will *not* be transferred as an NP loan to eligible OL or FO transferees.

(6) When an NP loan debtor is in default of the loan and/or security instruments and the default cannot be corrected in a reasonable period of time (usually less than 1 year), the account will be accelerated by the use of Exhibits D and F of subpart A of Part 1955 (available in any FmHA Office). Exhibit D will be completed in accordance with the FMI to delete the statement regarding deferrals. If the borrower has not cured the default within the time provided in the acceleration notice, FmHA will proceed with the foreclosure as set forth in Subpart A of Part 1955 of this chapter, without further notice or any extension of time.

(7) Any borrower having NP debts and farmer program loans will be serviced in accordance with the regulation applicable to those loans.

[50 FR 45755, Nov. 1, 1985]

§ 1872.21 Taking liens on real estate as additional security in servicing FmHA loans.

(a) *Liens.* In servicing FmHA loans, the best lien obtainable will be taken on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Normally, the prior concurrence of the District Director will be obtained. Such liens will be taken only when:

(1) *Inadequate security.* Present security for the loan is not adequate to protect the interests of the FmHA, and

(2) *Equity.* The borrower has substantial equity in the real estate to be mortgaged and it is determined that the taking of such a mortgage will not prevent the making of an FmHA real estate loan, which may be needed in the foreseeable future.

(b) *Real estate.* Before taking real estate as additional security for the FmHA loan the following items will be documented in the running record:

(1) *Justification.* The facts justifying the taking of such real estate lien;

(2) *Value.* A conservative estimate of the present market value of the real estate to be mortgaged (It will not be necessary to submit an appraisal of the property to be mortgaged.);

(3) *Description.* A brief description of any existing liens on such property including the repayment terms and the unpaid balance on the debts secured by such existing liens, unless this is accurately reflected on a recent financial statement; and

(4) *Identification.* The name of the title holder and how title of the property is held. (Title evidence need not be required.)

(c) *Security form.* Each real estate lien taken as additional security for both FmHA direct and insured loans will be taken on Form FmHA 427-1 (State), "Real Estate Mortgage for ———" unless a State Supplement requires the use of a form of mortgage comparable to that which secures the existing loan(s) to be additionally secured. The notes evidencing both FmHA direct and insured loans for which the additional security will be taken will be described in the same mortgage.

§ 1872.22 [Reserved]

§ 1872.23 Cosigners—Rural Housing (RH) loans.

A cosigner, as defined in § 1944.2(a) of Subpart A of Part 1944, is personally liable for payment of the RH debt. Cosigners are not entitled to any interest in the security property or the rights of the borrower under the loan agreements or security instruments. However, the cosigner may pay the loan in full and take any assignment of FmHA interests.

(a) *Transfer or other servicing action.* In a case of a transfer, a cosigner may be given preference to assume the FmHA indebtedness as either an eligible or ineligible applicant, whichever is appropriate. Otherwise, the cosigner's status does not make inapplicable any conditions or provisions required for transactions authorized in this subpart.

(b) *Substitution or replacement of cosigner.* Any person, as determined by the County Supervisor, with ability to repay the RH loan in accordance with its terms, may be substituted for the other party who is previously obligated as cosigner on the loan. The new cosigner will execute an agreement to pay the balance owed on the RH debt. This agreement will be made in consideration of the release of the existing cosigner from personal liability. The original of the new cosigner's agreement will be attached to the original note and a copy will be attached to each copy of the note. The new agreement will be prepared by OGC.

(c) *Release of liability.* A cosigner of an RH note may be released from personal liability for the debt upon satisfactory substitution of a new cosigner. The release may be accomplished by modifying and using Form FmHA 465-8 with the advice of the OGC or on appropriate form prepared by the OGC.

[40 FR 15066, Apr. 4, 1975, as amended at 46 FR 61989, Dec. 21, 1981; 47 FR 17468, Apr. 23, 1982; 50 FR 39960, Oct. 1, 1985]

§ 1872.24 Submission to National Office of certain partial release, subordination, consent, or other transactions.

The State Director may submit to the National Office for determination by the Administrator or his delegate any proposed transaction in which the conditions prescribed in the foregoing subparts for partial release, subordination, or consent by the FmHA cannot be satisfied, or any servicing action, that in the opinion of the State Director, is necessary for the protection of the Government's interest. The State Director must determine that either the FmHA secured indebtedness remaining after the transaction will be adequately secured, or the Government's security interest will not be adversely affected, and that the transaction and use of any proceeds will further the purposes for which the loan was made, improve the borrower's debt-paying ability, and permit necessary payment of reasonable costs and expenses incident to the transaction which the borrower is unable to pay from other sources. This Subpart is primarily intended to be used for those cases in which the use of the proceeds would be necessary for the borrower to retain the farm or rural residence that otherwise usually could not be accomplished. The State Director will submit to the National Office the full facts and justification for his recommendation and the County Office files. If the National Office approves the proposal, the returned material will, when legal assistance is needed, be submitted to OGC by the State Director for legal guidance in accomplishing the proposal.

§ 1872.25 State Supplements and reference to the OGC.

State Supplements will be prepared, with the advice of the OGC, as necessary, to carry out this Supplement, and forwarded to the National Office for prior approval. Whenever, in this Supplement, reference is made to advice or approval of the OGC it is contemplated that to the maximum extent possible the legal advice or approval may be stated in a general way whether included in State Supplements, State Bulletins, or other statements or explanations, rather than by the submission of individual matters to the OGC. It should be possible under such a plan to procure the most efficient legal assistance in handling real estate security servicing transactions.

§ 1872.26 Redelegation of authority.

The State Director is authorized to redelegate in writing any authority delegated to the State Director in this Subpart to one or more of the following State Office employees: Chief, Rural Housing, Chief, Farmer Programs, Chief, Community Programs, Rural Housing Specialist; Farmer Programs Specialist; and Community Programs Specialist. The State Director may also redelegate in writing to the Property Management Specialist the responsibility for carrying out liquidation actions and management of security property for those cases where a determination has been made that liquidation of a loan is necessary to protect the Government's interest.

§ 1872.27 Nondiscrimination.

Each instrument of conveyance for any transfer or foreclosure sale of real property subject to Title VI of the Civil Rights Act of 1964 will contain the following covenant:

> The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended.

EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN BUREAU OF SPORT FISHERIES AND WILDLIFE AND THE FARMERS HOME ADMINISTRATION

The purpose of this memorandum is to simplify and facilitate the obtaining by the Bureau of Sport Fisheries and Wildlife (Bureau) of subordination of mortgages held by the Farmers Home Administration (FmHA) on lands with respect to which the Bureau obtains a "Conveyance of Easement for Waterfowl Management Rights" (3-1916 Rev. April 1970). In order to accomplish this purpose it is agreed that:

1. In each case in which the Bureau proposes to take an easement from a landowner whose land is subject to a mortgage held by FmHA and the Bureau's proposal is acceptable to the landowner, the Bureau will notify the local FmHA County Supervisor. The notification will show the amount of consideration to be offered for the easement and the legal description of the land to be affected by the easement. Where there are existing drainage facilities on the land, the affected wetland areas that are to be excluded from coverage by the easement will be outlined on a map and furnished to FmHA and the landowner.

2. Where a subordination agreement is required, the FmHA County Supervisor will advise the designated local official of the Bureau as to whether the consideration is adequate from the standpoint of FmHA as mortgagee.

3. Where a subordination is required and the County Supervisor advises that the consideration is adequate, said easement form will be amended by: inserting at the end of the instrument the following: "In consideration of payment which is determined to be adequate from the standpoint of the FmHA as mortgagee, for the foregoing easement as provided in paragraph 5 thereof, the United States of America acting through FmHA hereby subordinates it mortgage dated———, recorded in Book——, page——, of the real estate records in ———County, State of———to said easement.

———Date

UNITED STATES OF AMERICA

By ________________________

FmHA County Supervisor

4. Where a subordination is not required of FmHA, because of a waiver of the need for a subordination by the United States Attorney General, the Bureau nevertheless

will send a copy of the agreement and the check for the easement consideration, which will include FmHA as a co-payee, to the FmHA County Supervisor.

5. In all cases where an FmHA mortgage is involved, the easement form will be amended by: inserting at the end of paragraph 5 an additional sentence as follows: "The check for the easement consideration will be made payable to the Farmers Home Administration (FmHA) and the landowners, as co-payees, and will be mailed to the FmHA to be applied to its mortgage unless applied on a prior mortgage debt or released for other use as permitted by FmHA regulations."

6. The Bureau and FmHA will issue such procedures or directives to their respective field offices as may be necessary to effectuate this memorandum of understanding.

Date: September 14, 1967.

A. V. TUNISON,
Acting Director, Bureau of Sport Fisheries and Wildlife.

Date: August 29, 1967.

HOWARD BERTSCH,
Administrator, Farmers Home Administration.

SUBCHAPTER G—MISCELLANEOUS REGULATIONS

PARTS 1890–1890s—[RESERVED]

PART 1890t—TIMESAVING AND PROGRAM IMPROVEMENT

Sec.
1890t.1 Purpose.
1890t.2 Procedure for implementation by May 31, 1972.

AUTHORITY: Sec. 339, 75 Stat. 318; 7 U.S.C. 1989; sec. 510, 63 Stat. 437; (42 U.S.C. 1480); sec. 4, 64 Stat. 100; (40 U.S.C. 442); Order of Acting Secretary of Agriculture, 36 FR 21529; Order of Assistant Secretary of Agriculture for Rural Development and Conservation, 36 FR 21529.

§ 1890t.1 Purpose.

This part modifies Subpart A of Part 1902, Part 1807, and prescribes the policy and procedures for closing real estate loans, including loans secured by leasehold but not Government-acquired property. An important goal of this Administration is to implement policies and procedures which will permit the agency to administer all programs with the greatest efficiency possible. This means that the Farmers Home Administration (FmHA) must continuously review its policies and procedures to determine ways in which it can improve the quality and efficiency of our operations at all levels.

[37 FR 9206, May 6, 1972]

§ 1890t.2 Procedure for implementation by May 31, 1972.

(a) *Use of designated attorneys and title insurance companies for loan closing.* (1) Each State Director will authorize designated attorneys or approved title insurance companies to close real estate loans including loans secured by leasehold but not Government-acquired property and transfers specified in § 1807.1 of this chapter (such loans and transfers being hereinafter referred to as "loans" or "loan closings") and will give them responsibility for disbursing loan funds including any funds of a private investor in the insured note involved and directions for disbursing any funds the borrower is required to furnish in connection with the loan, provided:

(i) The designated attorney has liability insurance for errors and omissions in the amount of at least $100,000 (the liability insurance policy may have a deductible of not more than $1,000 unless prior authorization is obtained from the National Office) and has a fidelity type bond of at least $10,000 or equivalent fidelity type protection. If other associates or secretarial staff members have access to the funds in the escrow account, each such individual must have a fidelity bond to cover any fraudulent or dishonest act.

(ii) A title insurance company must, in addition to the requirement set forth in § 1807.1 of this chapter provide to the FmHA evidence of its financial condition, including appropriate balance sheets and profit and loss statements, to enable the FmHA to determine that it is in a financial position to cover any probable loss. Also, the title insurance company must furnish evidence that it has fidelity coverage of at least $50,000 on each individual who will have access to the loan funds for closing FmHA loans. Where State law imposes other requirements giving FmHA at least equivalent protection in the opinion of the State Director with the concurrence of the Office of the General Counsel (OGC), the State Director is authorized to approve title insurance companies on the basis of State law.

(iii) Form FmHA 427-18, "Fidelity Bond for Loan Closing Attorneys," will be furnished to the designated attorney for his use in obtaining the required bond. However, if the Escrow Agent already has a fidelity type bond, the County Supervisor should review a copy of it to make sure it is comparable to the provisions of Form FmHA 427-18. If the County Supervisor is unable to determine whether that bond meets FmHA requirements he should refer it to the State Office for advice.

(iv) The designated attorney or title insurance company makes application on Form FmHA 427-14, "Agreement to Provide Loan Closing Services," properly completed and executed, to take the responsibility for loan closings and the disbursement of such funds and the application is given written approval by the State Director.

(v) The State Director will approve the application by endorsing his approval on a conformed copy of the application and will notify the designated attorney or title insurance company of his approval by returning the approved copy. Such an attorney or company so approved may be referred to hereinafter as the "Escrow Agent."

(2) If an acceptable Escrow Agent is not available or if there is a low volume of real estate loans and the Escrow Agent's cost would be relatively high for each case because of the cost of the bonds, loans in that county will be closed in accordance with Part 1807 of this chapter in the usual manner. In a county where complicated problems will be encountered by the Escrow Agent disbursing the total funds, the State Director may authorize the County Supervisor to use the supervised bank account and send to the Escrow Agent only the funds required to be disbursed at loan closing. In any county where Escrow Agents are not being used, or where the Escrow Agent will disburse only a portion of the funds, summary statements of the reasons will be forwarded by the State Director to the National Office.

(3) Each State Director will prepare State requirements as necessary to implement loan closings under this Part 1890t. The State requirement will prescribe which originals and how many copies of specified forms must be executed or conformed and which originals and/or copies must be returned to the County Office after completion of the loan closing and any other essential information that is not contained in Part 1807 of this chapter, including the requirements of paragraph (a) of this section.

(4) Form FmHA 427-15, "Loan Closing Instructions," will be used by the County Supervisor to transmit the necessary forms, documents and instructions to the Escrow Agent.

(5) For any loan closing for which an Escrow Agent will be responsible no FmHA personnel will be present unless authorized by the State Director on an individual case basis.

(6) Each State Director will see that all designated attorneys and approved title insurance companies are fully informed of what their responsibilities are expected to be if they apply for and receive approval as Escrow Agents under this Part 1890t, and that they are given an opportunity to make application on Form FmHA 427-14 for such approval. Designated attorneys and title insurance companies which do not apply within a reasonable time or are not approved will be removed from the lists of designated attorneys and approved title insurance companies except in cases covered by subparagraph (a)(2) of this section.

(b) *County Supervisor's responsibilities in loan closing.* The County Supervisor will: (1) See that the requirements for property insurance set forth in Part 1806 of this chapter are complied with, including a receipt for payment of 1 year's insurance, and see that the applicant's income and debts have not increased substantially since the loan docket was developed. This will be done before the loan-closing instructions are issued and by use of Form FmHA 427-16, "Notification of Loan Closing." If the applicant's income or debts have changed substantially, or if more than 90 days have passed since the loan was approved, the applicant will be required to contact the County Supervisor immediately for a review of his situation.

(2) Furnish to the Escrow Agent the check made payable to the borrower and all forms, documents, and instructions necessary for closing the loan.

(3) Require the Escrow Agent to furnish FmHA with a receipt on Form FmHA 427-17, "Loan Closing Statement," showing how the loan funds were disbursed.

(4) Review the material sent to him by the Escrow Agent to see that the loan was properly closed and that all funds were disbursed as instructed.

(c) *Escrow Agent's responsibilities in loan closing.* The Escrow Agent will: (1) Apply for approval and agree to close loans and disburse funds by submitting to the State Director an executed completed original and one copy of Form FmHA 427-14.

(2) Agree to furnish legal services, close loans, and disburse funds in accordance with Part 1807 of this chapter and other instructions to be received from the County Supervisor or other FmHA official.

(3) Disburse loan funds and any funds furnished by the borrower as required in accordance with loan closing conditions. Loan checks received by the Escrow Agent will be endorsed by the loan applicant or his bonded agent and deposited by the Escrow Agent in an escrow account on the day of the loan closing and disbursed in accordance with Part 1807 of this chapter and other instructions received from FmHA. The loan check will not be endorsed or deposited in the escrow account until the Escrow Agent has determined that the loan can be closed. Funds will not be disbursed from the escrow account until the mortgage is filed for record. Any balance of funds to be used to complete planned development will be deposited in a supervised bank account (which is a bank account on which checks must be signed by the borrower and countersigned by authorized personnel) by the Escrow Agent after obtaining the borrower's signature on Form FmHA 402-1, "Deposit Agreement," that has been completed by the County Supervisor and submitted with instructions to the Escrow Agent. The check used for withdrawing the funds from the escrow account will be made payable to the borrower and endorsed by him or his bonded agent in the following manner: "For deposit only in my countersignature bank account in the (name of bank and address when necessary for identification) pursuant to Deposit Agreement with the Bank and the United States dated ________."

(4) After making disbursements and collections to carry out title clearance and closing, the closing agent will make an accurate accounting of costs and prepare Form FmHA 440-59 (HUD-1), "Settlement Statement."

(i) During the business day immediately preceding the date of settlement, the closing agent, if requested by the applicant, must permit the applicant to inspect the Settlement Statement, completed for those items which are then known to the closing agent.

(ii) A copy of the Settlement Statement will be given to both the borrower and seller at the time of closing or settlement or will be mailed as soon as practicable if the borrower or seller are not present at closing.

(d) *Discontinuance of having OGC issue closing instructions.* It has been determined that it is not more reasonable or practical to have OGC issue closing instructions in order to avoid having designated attorneys and/or title insurance companies close or assist in closing loans. Therefore, for any State where closing instructions are being routinely issued by OGC for all loans of the types specified in § 1807.1 of this chapter, the State Director will approve a sufficient number of designated attorneys and/or title insurance companies to make OGC issuance of such closing instructions unnecessary, and will discontinue using OGC for this purpose except when unusual circumstances of any individual case call for it. If the State Director cannot find a sufficient number of qualified available attorneys and/or title insurance companies to obviate the need for closing instructions being issued by OGC routinely, he will report the facts to the National Office.

(e) *Issuance of State requirements.* A State requirement will be prepared as necessary to implement the loan closing, disbursement of funds, and the furnishing and completion of forms. Also, if any form required for loan closing is not legally satisfactory for use in a particular State, a State form with the same name and number as the FmHA form will be developed and used.

[37 FR 9098, May 6, 1972, as amended at 43 FR 28877, June 28, 1978; 46 FR 8219, Jan. 27, 1981]

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Material Approved for Incorporation by Reference

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. For more information on incorporation by reference, see the preliminary pages of this volume.

7 CFR CHAPTER XVII (PART 1701)
RURAL ELECTRIFICATION ADMINISTRATION, DEPARTMENT OF AGRICULTURE

Copies of Appendix A Bulletins will be available upon request in person or by mail to the Management Service Division, Room 4024-S, Washington, D.C. 20250.

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50-5 (D-803) Specificatiaons and Drawings for 14.4/24.9 kV Line Construction 9/69.	1736.97
50-6 (D-806) Specifications and Drawings for Underground Electric Distribution 1/75.	1736.97
50-15 (DT-3) REA Specifications for Pole Top Pins with 1⅜" Diameter Lead Threat 1/51.	1736.97
50-16 (DT-4). REA Specifications for Angle Suspension Brackets 3/52	[illegible].97
50-17 (DT-5B) REA Specifications for Wood Crossarms (Solid and Laminated) Transmission Timbers and Pole Keys 11/85.	173[illegible]
50-18 (DT-5C0 REA Specifications for Wood Poles, Stubs and Anchor Logs 11/85.	1736.97
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50–72 (U–4) REA Specifications for Electrical Equipment Enclosures (5–35 kV) 10/79.	1736.97
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50–74 (U–6) REA Specification for Secondary Pedestals (600 Volts and Below) 10/79.	1736.97
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